

UNITED STATES PATENT AND TRADEMARK OFFICE

PATENT PUBLIC ADVISORY COMMITTEE MEETING

EXECUTIVE SESSION

Alexandria, Virginia

Thursday, November 9, 2006

ANDERSON COURT REPORTING
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6 CARL GULBRANDSEN

7 DEAN KAMEN

8 JOHN LOVE

9 GERALD MOSSINGHOFF

10 LISA NORTON

11 DOUGLAS PATTON

12 ANDREA RYAN

13 DAVID WESTERGARD

14 JON DUDAS

15 JOHN DOLL

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1 P R O C E E D I N G S

2 (9:00 a.m.)

3 CALL TO ORDER AND INTRODUCTION OF NEW MEMBERS

4 CHAIRMAN RIVETTE: Let's call it to order.

5 We're a couple minutes late, but we'll try to make
6 it on time. I want to thank everybody for coming
7 today. I think this is an important thing that
8 we're going to embark on -- or at least I'm going
9 to embark on, and some of the new members. One of
10 the things I'd like to do today is at least have
11 everybody introduce themselves, because I don't
12 know most of you. And I think, for the new
13 members and myself, it would be great if we could
14 all just find out who we are, what we do. Max, do
15 you want to start that?

16 MR. GRANT: Sure.

17 CHAIRMAN RIVETTE: We don't have to stand.

18 (Laughter)

19 MR. GRANT: I've got some bad habits.

20 UNDER SECRETARY DUDAS: He's much more
21 imposing when he stands.

22 (Laughter)

1 MR. GRANT: I'm not so sure about that.
2 In any case -- I'm Max Grant. I've had the honor
3 of serving on the PPAC for a little bit more than
4 a year. I've tried to put an oar in the water or
5 two, but I'm still moving quickly up the learning
6 curve, thanks to the help of everybody here.

7 CHAIRMAN RIVETTE: And you're with?

8 MR. GRANT: Latham -- Latham and Watkins.
9 I don't prosecute patents, but we, once in awhile,
10 have a little squabble over them. So that's the
11 kind of work I get involved in generally.

12 MS. RYAN: Hi -- I'm Andrea Ryan. I am in
13 my third year of the PPAC. I represent several
14 pharmaceutical companies. I say I'm going to go
15 in the Guinness Book of World Records for retiring
16 from three -- I was Chief Patent Counsel at Warner
17 Lambert before it was acquired by Pfizer. Before
18 that, I was in private practice in new York City.
19 After Warner Lambert I went to Wyeth for five
20 years, retired from there. And now I'm working
21 part-time for Phil Johnson at J&J in
22 Massachusetts.

1 CHAIRMAN RIVETTE: Excellent.

2 MS. RYAN: So that's who I am.

3 MR. PATTON: Now you've educated me how to
4 use this. Good morning. I'm Doug Patton. I'm
5 with my firm, Patton Design. For about 25 years
6 we've worked with literally hundreds of companies
7 creating innovation. We do hardware, software,
8 mechanical design, marketing theory, and I've had
9 a lot of experience from start-up companies and
10 what their patent issues are, to companies like
11 working with Bill Gates and some high-level
12 software -- the extreme. So I kind of represent,
13 from an inventor's side, those extremes. I'm not
14 a patent attorney, but I feel, over the last 25
15 years I've come pretty close to learning a little
16 bit about it. Thanks.

17 MS. FAINT: Hi, I'm Cathy Faint. I'm Vice
18 President of NTU245, which means I'm a trademark
19 examiner and I work at home. I'm not totally lost
20 when it comes to science, though, since I was a
21 math and chemistry major, and spent several years
22 working on the breast implant litigation. But the

1 thing that I bring to the table is the perspective
2 of the examiners, and how we're affected by the
3 decisions that are made here at the PTO.

4 MR. LOVE: My name is John Love. I've
5 been with the Patent Office for over 30 years. I
6 won't say how many years over 30 years. But I'm
7 the Acting Deputy Commissioner for Patent
8 Examination Policy. I'm glad I got that right,
9 because I usually trip up. I help out and
10 coordinate with Kevin the agenda and other details
11 with the Commissioner's Office.

12 MR. BUDENS: I'm Robert Budens. I'm the
13 President of the Patent Office Professional
14 Association -- POPA. We represent the examining
15 corps on the patent side, and scientists and
16 engineers and to her professionals -- computer
17 sciences -- here at the U.S. PTO. We're
18 representing them.

19 MS. NORTON: Lisa Norton, and I'm with DLE
20 Piper. And I've been on the Advisory Committee
21 for about a year as well. And I do generally
22 patent prosecution and also a lot of

1 design-around-opinions, particularly for (off
2 mike) issues. So I do quite a bit of work on
3 litigation, as well, through that.

4 MR. MOSSINGHOFF: I'm Gerry Mossinghoff.
5 I'm a former patent examiner. I'm with the George
6 Washington University, Oblon & Spivack.

7 MR. WESTERGARD: I'm Dave Westergard. I'm
8 with Micron Technology in Boise, Idaho. We are a
9 semiconductor company, manufacturing DRAM, flash
10 and other products. I have been a litigator of
11 patent issues for the past 18 years -- almost 19
12 -- and have been actively playing in the patent
13 reform arena on the Hill for the past three years.

14 COMMISSIONER DOLL: Good morning, I'm John
15 Doll. I'm the Commissioner for Patents. And,
16 like Cathy and Robert, I'm here to represent the
17 examiners.

18 UNDER SECRETARY DUDAS: Jon Dudas,
19 Director of the Patent and Trademark Office. And,
20 taking a page out of John Love's book, I've been
21 here for more than four years, but I won't say how
22 much longer.

1 CHAIRMAN RIVETTE: I'm Kevin Rivette. I am
2 an old patent attorney -- and I work with a small
3 company called IBM. And I think we've got a very
4 interesting set of problems to work on over the
5 next couple years. So one of the things -- who's
6 on the phone?

7 MR. KAMEN: Dean Kamen. I'm the mascot.

8 CHAIRMAN RIVETTE: Oh, you're the mascot.
9 Oh, okay. Dean, you want to give us two seconds
10 of yours?

11 MR. KAMEN: I'm writing now a guy that's
12 very worried about what's going to happen to
13 patent reform after the last couple of days; and
14 looking at the ways the visionary committee, and
15 others in Washington, have been dealing with this
16 issue; and now seeing that the most insistent
17 characters pick up all the people with the loudest
18 voices with this issue is that they know the least
19 about it, and have the least capability to
20 understand the unintended consequences of what
21 they're doing. And I think a result of what's
22 happened in the last couple of days is PPAC

1 people, that you know what they're doing, ought to
2 be quickly trying to create educational
3 information that goes to people that are going to
4 make important decisions soon.

5 MR. GULBRANDSEN: I'm Carl Guldrandisen.
6 I'm (off mike).

7 CHAIRMAN RIVETTE: Carl, could you speak
8 up?

9 MR. GULBRANDSEN: (off mike).

10 CHAIRMAN RIVETTE: Carl, we couldn't hear
11 you. Could you say it one more time?

12 MR. GULBRANDSEN: I'm managing director
13 of Wisconsin Alumni Research Foundation, which
14 (off mike) for the University of
15 Wisconsin-Madison, and I'm on the PPAC to
16 represent the university community.

17 CHAIRMAN RIVETTE: Okay. Thank you. What
18 I'd like to do right now is let Jon Dudas open the
19 session, and then I'd like to step back and talk
20 about how we logistically do this, and some of the
21 goals that I think we could look at.

22 OPENING REMARKS

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1 UNDER SECRETARY DUDAS: Thanks. I'll be
2 brief. From my experience with PPAC before, that
3 usually means I'll be medium brief. But we'll
4 have time a little bit later to talk a little bit
5 more about what U.S. PTO concerns are, what we
6 think we're facing. So I'll just focus a little
7 bit on PPAC. If you came in, you probably saw the
8 banner that said, "2006: Celebrating our Record
9 Year." We had a fantastic year. We broke a great
10 number of records in the PTO. That's because of
11 our examining corps; that's because of setting
12 some clear goals and working hard to achieve them.
13 At the celebration that we had, it was just simply
14 a thank you for all of our employees. One of the
15 things that I had said was: I'd like to make a
16 case for why this is the most important agency in
17 the world. And I'll just make that case very
18 briefly here, and why you're so important to the
19 process. And that is: every world leader is
20 talking about intellectual property or innovation,
21 and it's a fundamental to each nation -- whether
22 it's a developing nation, a developed nation, a

1 least- developed nation. President Bush has made
2 a centerpiece of his tenure to try to pass the
3 American Competitiveness Initiative. President
4 Hu, in China -- one of the first things out of his
5 mouth was talking about the need for innovation
6 and competitiveness. Just about every leader
7 throughout the world has a plan for how they're
8 going to develop their economy that's based on
9 innovation. And, fundamentally, that means that
10 patent and trademark offices throughout the world
11 are critically the agencies that are going to help
12 get that done. I think what is so critical about
13 what PPAC is doing, and where we're trying to take
14 PPAC is: give you the opportunity to tell us
15 everything that is a concern; every issue that you
16 see out there; address everything that you see.
17 So, first and foremost -- truly, as an advisory
18 committee -- we're seeking advice. We're seeking
19 input. We want to know that things that aren't
20 obvious to us, or the things that we may not be
21 seeing. But also, critically, we want to take it
22 to a level where we're thinking very

1 strategically, very future-looking. We certainly
2 want to go over all the issues that are
3 administrative and management that you'd like to
4 see, and that you think are critical. But what we
5 think is most important is how we make certain
6 that the United States is competitive; how we make
7 certain that the United States is leading the
8 world in innovation; how we make certain that
9 people understand what intellectual property is,
10 and why it's so critical. Essentially, we're at a
11 cusp of a time -- and in a way, we've been here
12 for many decades, but I think we can probably
13 demonstrate that now may be a more critical time
14 than ever before -- where much of the world is
15 trying to determine whether or not the
16 intellectual property system that we've championed
17 in the United States, and tried to model
18 throughout the rest of the world, is the right
19 model or the wrong model. And there's a growing
20 voice of concern about what the right model is.
21 Dean Kamen was referring to some of that. So what
22 we would ask is: we've put together what we think

1 are some of the biggest thinkers on intellectual
2 property, with a good amount of diversity right
3 here on PPAC. And I guess what we'd challenge you
4 to do, and ask you to challenge us to do, is think
5 as big as you can possibly think; to look as
6 forward-thinking as you possibly can; look as much
7 to the future as you possibly can, and help guide
8 us in that process. So I'll get a little more
9 specific in 15 or 20 minutes. But that's really
10 what I wanted to say was, most importantly: thank
11 you -- and really acknowledge that what you're
12 doing is a service to the U.S. PTO. It's a
13 service to your country, for everyone who was
14 sworn in. You were sworn in with the same oath
15 that the President gets; the same oath that our
16 soldiers get, essentially. And we're asking that
17 you take that oath incredibly seriously because
18 what you do here will make a dramatic difference,
19 I believe, for the United States. And I think it
20 will make a dramatic difference for the world.
21 It's not just big talk. It really is -- this is
22 the center of the positive aspects of what every

1 nation is trying to look at. We're not about
2 national defense or homeland security. But if you
3 look at what nations are trying to do in a
4 positive way, it's grow their economies, and every
5 nation is looking for innovation in their patent
6 and trademark office.

7 CHAIRMAN RIVETTE: Thanks, John. Meeting
8 Remarks and Operating Guidelines.

9 CHAIRMAN RIVETTE: One of things I
10 think -- and I'll just reiterate this more from my
11 standpoint, and just some of the new members -- as
12 Jon just said, we've got a lot of great people
13 here. We've got big issues. We've got issues
14 that are much larger than any one of us, or any
15 one of our organizations. And what I would hope
16 is that when we're here we leave all of the
17 affiliations at the door, and we now work for the
18 U.S. government. And that's the only client we've
19 got -- if we look at it that way. So I know we've
20 all got other groups that we would love to talk
21 about with this. I'd like to keep most of this
22 private at this point in time -- unless we all

1 agree that we're going to share it. I think one
2 of the things about being an advisory committee
3 is: to give that advice, we've got to be able to
4 have open sessions that are truly get down in the
5 details. And we may ruffle some of each other's
6 feathers, but that's okay in here, and when we
7 walk out the door, we leave that behind; that we
8 tend to not bring back a lot of the things we're
9 going to discuss here to our groups. So they
10 really are just in the PPAC, and we'll take
11 actions on those. So let me give you an idea --
12 having been asked to do this, not having ever
13 attended any of the meetings before, and jumping
14 in with both feet. So let me give you an idea of
15 where I think we can go; what I'd like to take a
16 look at for the format of the meetings, and see if
17 everybody agrees. What I think we should do, and
18 what I would be comfortable with, is: these
19 meetings that we're having here in person should
20 be discussion meetings. My intuition is that
21 these meetings, we should have each session no
22 more than about an hour-and-a-half. I don't know

1 about you guys, but I have the attention span of a
2 gnat. And because of that, I'd like to have some
3 clear ideas of why we're talking about it, what we
4 need as an outcome from it, so that at the end of
5 the hour-and-a-half we've actually got something
6 done. If it's got to go over that we can all
7 agree to it. But that gives us three or four --
8 maybe five things -- but three or four things that
9 we're going to in-depth talk about per session
10 when we're together. I would prefer this not to
11 be a data- download session, where all we do is
12 get information from the office, or from ourselves
13 that we could have shared beforehand. So, what
14 we've talked about -- and, forgive me, because
15 everybody here is named John. They're all spelled
16 differently, but that's okay. I mean, it's just
17 Jon, John, John and John.

18 UNDER SECRETARY DUDAS: It makes it easier
19 to assign blame. Just --

20 CHAIRMAN RIVETTE: So, John and John and
21 John and I -- no -- what I think, optimally, I
22 would like to see is that all of the information

1 from the office that we're going to talk about
2 gets sent out about two weeks ahead of time.
3 Optimally, what I'd like to see is that we get a
4 chance to review that and kind of frame something
5 for them so that when we get here today -- or in
6 the future -- we have a framed problem. We have
7 people who've worked on it, we have an idea, and
8 we have some viewpoints. It's going to be a
9 little muddy today, because we have not gone
10 through that process as a group before. But I'd
11 like to see if we could do that. Another thing
12 I'd like to do is I'd like to talk about, later
13 today, realigning some of the subcommittees or
14 some of the work. And I'd like to align it along:
15 why is everybody here? It's one of the questions
16 I'd like to go around the room with in a couple
17 minutes. What is it that you think the Patent
18 Office is facing? What are areas that you'd like
19 to work on? There are only nine of us. All of us
20 have got some other job we're doing -- or multiple
21 ones. And if we don't work on things we're
22 interested in we're not going to get any work

1 done. I don't see this as a rules committee. I
2 don't see this as another accounting committee. I
3 see this as an advisory committee. We have
4 responsibilities by our charter. We will look at
5 the budget. We will look at rules. But I don't
6 think that's our main purpose in life. I'm not
7 sure if we should be making statements or filing
8 things in opposition to rule changes. I think
9 that a lot of organizations do that. I don't know
10 if that's a PPAC type of activity that we want to
11 continue. I think we should open it up for
12 discussion. My feeling is that, as an advisory
13 committee, we should be giving advice; we should
14 be doing work; we should be extending our networks
15 on behalf of the Patent Office and seeing if we
16 can get the best advice in here. I will tell you
17 that I'm really happy, Doug, that -- in the
18 marketing side, I think we need some help in that
19 area. I'd like to talk about that this afternoon.
20 There are some patent products that the office is
21 looking at. One of the conversations was: what's
22 the process we should be using? There all

1 processes to look at products. I think we should
2 be using the talents that the professionals have
3 in that area, such as yourself. And maybe we can
4 walk down that path so that better to understand
5 how to build those products, and how to gather the
6 information. So that's, in a nutshell, how I'd
7 like to see the meetings held, and how I'd like to
8 work. I think we're probably -- if it's okay with
9 everybody -- have the office probably update us
10 once every couple months with a conference call so
11 that we get data, and we don't just have a rhythm
12 of four-times-a- year, so we get data as it's
13 coming out and, again, ahead of time. Hopefully
14 we get it, we get the data, and then we have a
15 presentation. And that's a "download session;"
16 that's a session where there's not going to be a
17 result that's expected. But I would like these
18 meetings to be result-oriented. So, with that,
19 I'll throw it open. Has anybody else got any
20 other views? Any things that you'd want to change
21 about PPAC? I mean, right now it's all open.
22 Andrea, you got anything that you --

1 MS. RYAN: Just a very minor point --

2 CHAIRMAN RIVETTE: Yes, yes.

3 MS. RYAN: -- is: have you thought about
4 as to when the meetings are? Because we only meet
5 four times a year, and if we don't kind of get it
6 cranked into our schedule at some point -- I had a
7 conflict the last time.

8 CHAIRMAN RIVETTE: I think we all did.

9 MS. RYAN: But I don't know -- I admit to
10 being ignorant as to exactly how we set the dates.

11 CHAIRMAN RIVETTE: Do you know what? I'll
12 solve that problem completely. Why don't we take
13 about another three minutes and set the dates, so
14 we can get that done right now. You want to go
15 through the next 18 months? Or the next 12
16 months?

17 MS. RYAN: 12 months would be good, I
18 think, particularly since 2007 is upon us.

19 MR. GRANT: But it should be driven, I
20 would assume, but the PTO's decision points --
21 budgeting, etcetera -- so that those meetings are
22 being held at the appropriate time where they can

1 get our input prior to them -- so that they have
2 an opportunity to consider that input and then
3 make their decisions consistent with running the
4 organization.

5 CHAIRMAN RIVETTE: Right.

6 MR. GRANT: I think that should drive
7 it -- subject to, you know, swabbling around about
8 a week or so -- within a week window -- to make it
9 work for everyone.

10 CHAIRMAN RIVETTE: Other comments? Gerry,
11 you've always got comments. No?

12 MR. MOSSINGHOFF: Not right now. No.
13 Thanks. I agree with Andrea, though: I think we
14 all have to get it on our calendars early, or
15 things are going to pass us by.

16 CHAIRMAN RIVETTE: Lisa?

17 MS. NORTON: I think it would be helpful
18 if there's areas -- you know, we've been
19 commenting on rules, and sometimes you may not
20 want our comments.

21 CHAIRMAN RIVETTE: Oh, that's not true.

22 MS. NORTON: But I think it's helpful, if

1 there's areas where we can be of help, if there's
2 certain expertise that people on this committee
3 have that would be helpful to the Patent Office,
4 that would be great if maybe we could -- maybe you
5 guys can think about that a little bit and let us
6 know, or we can talk about that amongst ourselves.
7 But if we do have -- obviously, Gerry's got some
8 expertise with the Patent Office. But if we could
9 know a little bit more about what you would like
10 from each of us, that would help, too, as far as
11 what our expertise is.

12 CHAIRMAN RIVETTE: I think we're going to
13 do that in about 15 minutes.

14 MS. NORTON: Well, good.

15 CHAIRMAN RIVETTE: So -- Doug, have you
16 got anything?

17 MR. PATTON: As a new member, I have an
18 overwhelming amount of questions, because this is
19 so new. And, you know: what are the goals?
20 Everything I do is so driven by development
21 schedules and goals, so I'm thinking there has to
22 be yearly goals, month goals -- every week -- get

1 down to the detail to orchestrate it and to make
2 anything happen. And for me right now -- I assume
3 today we just learn and listen. But I'm
4 complimented that I might be able to expound about
5 some personal passions that may connect with the
6 group, or it may not. It may not be part of it.
7 But I think, from my own viewpoint, that -- like
8 you say -- I'm interested, you've already
9 mentioned marketing, and I'd really like to find
10 out a little bit more about what you're thinking
11 there. Like I say, I'll just overwhelm the group
12 with questions so I should be quiet.

13 CHAIRMAN RIVETTE: No, no, no, no, no, no,
14 no. Anybody else?

15 MR. WESTERGARD: I was interested in your
16 comment about sort of the "advisory role" that is
17 the nature of PPAC. And I would think that in
18 that advisory role we would never take a public
19 position in opposition to the Patent Office goals
20 and objectives. Because it would seem to me that
21 we would come into this meeting and discuss all of
22 the issues, and our job is to advise PTO, and

1 Direct Dudas' job is to take the advice or not;
2 and that we would not decide to take a public
3 opposition to something the PTO, under Dudas, has
4 decided to go in a certain direction. Is that
5 consistent with your view? That we are advisors
6 to the PTO, and they take, or not, our advice? Or
7 is your view that the PPAC is to take an
8 independent position on issues and make sure that
9 they are either -- if not accepted by PTO, then at
10 least vetted in a public way to allow the public
11 to understand what the points of disagreement and
12 the like are? I view our role as advisory, and
13 they can take or not our comments.

14 CHAIRMAN RIVETTE: Having read the
15 charter, and having talked to John and John, the
16 way I see this -- and we can open it up. I mean,
17 this is not cast in concrete -- but my reading of
18 it is that it is advisory, as you discussed -- up
19 to a point. And if we really diverge at some
20 point, and we've got an apocalyptic problem, where
21 we really don't see eye to eye, and we've gone
22 through all of the normal -- you know, we've

1 talked about it, we've tried to put positions, and
2 we really are at loggerheads, then I think, as a
3 group, we should decide if it's time to step
4 forward and say: for the good of the country, for
5 the good of the Office, we should be doing
6 something different. But it would be only under
7 those catastrophic conditions. I can't see those
8 conditions happening. But I do think that, you
9 know -- we're still employees of the government,
10 and we should take that at some point, if that's
11 what is necessary. John, I don't see it ever --

12 UNDER SECRETARY DUDAS: No, no -- that's a
13 fair point. We again, take the Constitutional
14 oath very seriously. I do think that the
15 opportunity for us to have a free and flowing
16 discussion, and have the opportunity to really
17 open up to getting the advice is one where we are
18 wanting to share everything we have and be
19 transparent -- not just with PPAC, but with
20 everyone. But to be able to have -- one of the
21 things I'm very proud of our management team is --
22 and, actually, across the PTO, but particularly

1 here on the 10th floor -- is we have very heated
2 debates. They're very loud. One time
3 Commissioner Doll and our CAO were in a very
4 heated yelling match. And what I was pleased
5 about -- not that we disagreed, but that literally
6 screaming back and forth was "You're not doing
7 what's right for examiners," and the response was:
8 "No, no -- what you're doing is not right for
9 examiners." So we had the right goal, if not the
10 agreement on how to get there. I'm not suggesting
11 we need to yell at each other -- but I think a
12 very robust conversation, and one where everybody
13 can feel comfortable -- and, again, where we can
14 get the very best advice. And one of the things
15 that you've mentioned, what we want: folks really
16 here are hand-picked, if you will. In fact we
17 reach out sometimes to people -- and it's legal to
18 do, and appropriate -- to people who hadn't even
19 applied, and said, "This is the way we want to go.
20 How do we get to the point we want to get to? How
21 do we get incredibly big thinkers and people who
22 are committed?" So even though you have not just

1 day jobs, but full-time, year-long jobs, we're
2 going to tap you as much as we possibly can. What
3 you had mentioned as one of the purposes of PPAC,
4 or one of the things we'll be looking for -- I'll
5 show you now, we put these out monthly, and we
6 measure them weekly: production, quality,
7 efficiency, productivity is one thing we
8 definitely measure. And that we can talk about
9 what's right. But one of the things we didn't do
10 so well: we didn't realize until we had a number
11 of businesses say, "I'm getting ripped off in
12 Chile by a Chinese company. And I found it in the
13 following way -- " -- and we had to talk to a
14 number of companies to realize you don't have any
15 protection whatsoever. We then realized we have
16 an affirmative duty to small businesses in the
17 United States -- something that really hadn't been
18 much part of our mission, and we had to go out and
19 discover that only 19 percent of small businesses
20 who proclaim IP to be critical to them knew a U.S.
21 patent was good in the United States. And in the
22 cities we visited we raised it to 80 percent. But

1 those are the kinds -- there could be wholesale
2 things -- I hate to admit -- but there could be
3 wholesale things that we're missing, that the U.S.
4 PTO can be front-and-center on. And we'll talk
5 about some of the things that we have seen, and
6 how we can educate on innovation: we're working
7 with schools, and an Ad Council campaign. But
8 there are a whole lot of things that you see, that
9 you can bring to us, that we don't even know we
10 should be doing.

11 CHAIRMAN RIVETTE: Carl? You still there?

12 MR. GULBRANDSEN: Yes, I am.

13 CHAIRMAN RIVETTE: Any ideas?

14 MR. GULBRANDSEN: Well, I tend to agree
15 with you on the fact that we are advisory. I
16 don't think that we should publicly taking adverse
17 position to the Patent Office. I hope that w all
18 give thoughtful advice to the Patent Office, and
19 that they take it in the context in which it's
20 given, and hopefully something constructive can
21 come out of it. I also think that there's huge
22 challenges. If there is a way we could figure

1 this out, I think that some of the accelerated
2 examination strategies that have been talked about
3 are terrific, if we could use them and not get
4 sued for inequitable conduct.

5 CHAIRMAN RIVETTE: Yes, we're going to get
6 into the details.

7 MR. GULBRANDSEN: -- smart people can
8 figure this out.

9 CHAIRMAN RIVETTE: Yep. Well, there are a
10 number of issues -- I agree with you, Carl -- that
11 the devil's in the details, and we're going to get
12 to them. Robert? Any comments?

13 MR. BUDENS: Well, I agree with you to an
14 extent on the purpose of the advisory functions of
15 this panel, but I'd also remind people that, you
16 know, when this PPAC was created in the American
17 Inventors Protection Act, it has two jobs: one is
18 to advise the Patent Office, but the other one is
19 also to report back to Congress on what the Patent
20 Office is doing. And so I think that if we get
21 into situations, as you suggest, where we really
22 have a very big difference of opinion on the PPAC

1 of what direction the agency is going, versus what
2 direction the agency really wants to go, then I
3 think we also have a responsibility in reporting
4 back to Congress what those thoughts are.

5 CHAIRMAN RIVETTE: And I agree with you.
6 Dean? Any comments, feelings at this point?

7 MR. KAMEN: Well, maybe I was being, as
8 usual, too sarcastic when I said "mascot," but I
9 believe, even in just the comments we've heard
10 about what's going on, I think most of the people
11 here have an extraordinarily deep understanding,
12 even into the details, of what goes on inside the
13 Patent Office, based on your history, experience
14 and your professions. And I don't have that. And
15 maybe -- I've always felt that I could turn that
16 lemon into lemonade by continuing to argue that
17 advisors shouldn't be micro-managing any
18 organization; a board of directors shouldn't be
19 telling management what to do or how to do it. I
20 believe that there is a huge, huge gap between
21 what the public in general -- and, more scarily,
22 what the people in government -- understand is the

1 job of, the issues with, the problems in the
2 Patent Office and the ways those are seen by the
3 people inside that know what they're doing, or you
4 people, because you have an enormous history and
5 expertise in. I think a very important function
6 of this group ought to be to communicate, in a
7 credible way that doesn't look inappropriate or
8 self-serving, which is -- I don't think people
9 that work directly for the Patent Office, if they
10 have some real issue, can effectively talk to
11 Congress or anybody that might help them on some
12 issues, because they either, again, look
13 self-interested or not impartial. And with the
14 really big issues -- as Jon Dudas pointed out --
15 the world is moving very quickly towards what I
16 think we all believe. We all have differences,
17 but what we mostly believe is the importance of
18 intellectual property. And with some irony, this
19 country is just a little numb to it, or doesn't
20 give it a lot of importance. And I think that no
21 matter what we do, the most important thing PPAC
22 can do is be a voice that can articulate as a

1 board of directors, or as a credible, somewhat
2 independent third part; can advocate for the
3 importance of the Patent Office; make sure that it
4 gets what it needs from the government agencies,
5 the Congress, that need to support it; and, in
6 part, make sure that that happens, because the
7 public at large sees the importance of this and
8 gets the right attention focused there. I don't
9 know of any group that is working towards keeping
10 those externalities -- whether it's government or
11 the public -- where the importance of the Patent
12 Office -- and the internal people can't, in a way
13 that doesn't look distasteful, do that to and for
14 themselves. We need to do that. The only reason
15 I bring all that up at a high level is: you know,
16 we get 200-page documents from PPAC, with the
17 budget in it. I get a lot of stuff from you guys
18 that is as impossible to read as all the crap you
19 get from any set of lawyers.

20 CHAIRMAN RIVETTE: Good for you, Dean.

21 MR. KAMEN: And I think that we should
22 make a rule that as we decide there are issues

1 where we reach consensus on -- or at least close
2 to consensus on, or we work at a high level,
3 saying "Well, with these caveats we now reach
4 consensus on this" -- we should boil down to a no
5 more than three or four page document, readable by
6 a non-lawyer -- somebody that might be as simple
7 as somebody in Congress --

8 CHAIRMAN RIVETTE: I think that's right.
9 I think --

10 MR. KAMEN: There's a real issue here.
11 These people with these expertise deep in the
12 field, and these people with broader issues, have
13 reduced this to a clear statement of an impending
14 issue, and a clear goal of something they'd like
15 to do to help the Patent Office do more, and do
16 better, etcetera. And we should be issuing one of
17 those -- I mean, if at the end of each of our four
18 day-long meetings in a year we haven't been able
19 to boil them down to one or two very high- level,
20 very critical issues that need attention, that we
21 can add clarity and focus to, I'm not sure we're
22 functioning as an "advisory" board to anybody.

1 CHAIRMAN RIVETTE: Mm-hmm.

2 MR. KAMEN: And I would suspect that
3 everybody in that room, if they took a deep
4 breath, would think of one or two issues that they
5 are concerned about. And we should make sure that
6 we vet them, get the expertise of everybody --
7 some of you with great detail. As you said, the
8 devil's in the details -- some of you with
9 big-picture view of how government works, and what
10 the public policy issues are; and then working
11 with the people inside the Patent Office and
12 people on this committee, we should make a habit
13 of turning those into short, compelling, readable,
14 pieces of advice, and make sure they get to the
15 right people -- whether it's public, government,
16 or otherwise. Otherwise, we're just wasting out
17 time.

18 CHAIRMAN RIVETTE: I think it's a great
19 idea, Dean. As we go around -- not right now, but
20 probably this afternoon -- we go around and talk
21 about what we want to accomplish in PPAC, and what
22 we want to work on -- I've put you down for

1 "communications."

2 MR. KAMEN: I'll take it.

3 CHAIRMAN RIVETTE: You've got it. Any
4 other comments before we move on?

5 (No response)

6 CHAIRMAN RIVETTE: Okay -- so, the rest of
7 the day -- let me just give you a quick rundown.
8 What I've asked Jon, John and John to do today is
9 to kind of give us, at 9:45, give us the view of
10 what keeps them up at night: what are the three to
11 five things that really drive them crazy? That
12 makes them worry? Why are we here? I mean, if we
13 aren't answering those questions, I don't
14 understand why we're here, and I don't understand
15 why we're giving up our time to do it. So what
16 I've asked them to do is -- in whatever form that
17 they want -- to just sit down and talk to us. And
18 I don't see this as a formal presentation. It's
19 just: What are the concerns? And how would they
20 like to work with PPAC, so we can kind of just
21 re-structure it, re-jigger it, and get something
22 that works for the Office and for the U.S. After

1 that, we're going to talk -- we've got Randy
2 Rader, who's going to give us kind of a different
3 view. Randy's been out helping educate judges
4 around the world -- in Russia, in Brazil, in
5 China, and all over the place. He sits at the
6 CAFC. I don't think he's going to give us a
7 perspective on any of the cases in front of him,
8 or legal opinions. But I know that he'll be glad
9 to share with us almost any one of his viewpoints
10 as a law professor -- like Gerry -- not as a
11 sitting judge. Randy, I think he's going to give
12 us about five or 10 minutes of perspective on what
13 he's seeing out there, and then go into more of a
14 question-and-answer, so we can kind of probe him
15 for ideas. I'd like to do that with every one of
16 our meetings. I'd like to get somebody outside of
17 our normal group to give us a perspective. So if
18 you've got suggestions -- you know, I'll give you
19 my idea. I'd like to get international flavoring
20 here. If we can get someone from Japan, maybe
21 Takeshi Isayama from Nissan -- he's the ex-patent
22 commissioner over there. Maybe we could get some

1 people out of the Chinese patent office. I'd like
2 to get a different perspective. Maybe we should
3 get someone from the EU -- even Nina Harvey or
4 somebody like that. I think that the PPAC needs
5 that. I think that it's something we should do --
6 and make it interesting. I mean, one of the
7 reasons we're giving up our time to come here is
8 to, one, advise and also to learn. So that's one
9 of the things I'd like to continue. So if you've
10 got ideas, let me know who you'd like to have
11 speak. It's going to be informal. I don't want
12 it recorded. I don't want these things to be
13 something where they've got to be worried they're
14 going to see this in the press tomorrow. This has
15 got to be something where it's behind closed
16 doors. And if we don't respect that we aren't
17 going to get the people's viewpoints. We've
18 actually got to talk about some things today on
19 the budget, which we'll do in the open session,
20 give us kind of a report on that. I think we've
21 got to talk to the strategic initiatives, and
22 understand where you guys want to go and how we

1 can help you get there. I think we've also got to
2 talk about a report that we've got coming up later
3 this month that we've got to get filed. Is it
4 really just later this month? What are the hard
5 dates that we've got to back up from? And what
6 should we be preparing in that report? I know that
7 I haven't had a lot of input into it. I don't
8 know how much has been in before. I think next
9 year we're going to have a lot more input into it,
10 and I think we should look at the structure of it
11 and see: is this the type of report we would feel
12 comfortable sending forward?

13 MR. MOSSINGHOFF: It's my impression that
14 the chairman prepares the report.

15 CHAIRMAN RIVETTE: I knew you were going
16 to say that. But my understanding is: the
17 chairman also has the help of the most senior
18 members.

19 MR. GRANT: Member?

20 CHAIRMAN RIVETTE: Members is even better.

21 MR. GRANT: That's what I thought he said.

22 CHAIRMAN RIVETTE: But I'm not sure that

1 members who are existing for taking it so
2 seriously, and for being open to taking it in an
3 even harder working, bigger direction -- the kinds
4 of things we're going to try to open up. And I
5 want to thank Bob and Cathy, in particular, as
6 well, because, like us, you're all on the clock,
7 but recognize the importance of being here and
8 bringing the right perspective. And also I just
9 got news, between the last time I spoke and now,
10 that my son who was sick at school has been picked
11 up, and everything's okay.

12 So if I look a little more relaxed, that's
13 the main reason. Kevin said something that was, I
14 think, brilliantly simple last night when I said
15 what would you like us to talk about? What's the
16 most important thing, since you've talked to each
17 of the members of PPAC recently about what they'd
18 like to see? And he mentioned what, I think, was a
19 brilliantly simple answer, which is: tell us what
20 keeps you up at night. And I have four things that
21 I think you'll be champions to help with -- but one
22 that you probably can't help with is: I have a

1 recurring problem with a four-year-old sleeping on
2 my head. I'll find a way to correct that myself.
3 No matter how big the king size bed is, he finds a
4 way to start by sleeping on my head. But the four
5 things that keep me up at night, if I look at it in
6 a way -- and I think they all require champions,
7 and I think that you all are going to be critical
8 in helping us resolve these. They're not in any
9 particular order. Some of them are more keeping me
10 up at night in my role as director. And, actually,
11 I don't really get kept up at night. I just keep
12 working and working, and hit deer on my way home at
13 two o'clock in the morning. But what keeps me up
14 at night: first, I mentioned earlier we had a
15 record-breaking year. What really is critical, in
16 my opinion, for the Patent and Trademark Office is
17 to balance the many critical and competing goals
18 that we have. There's no question that quality and
19 production are in competition with each other.
20 There's no question that productivity and quality,
21 in many ways, can be in direct competition with
22 each other. At some point you'll have the

1 opportunity -- maybe one of the things you might
2 want us to do is send you the monthly reports, just
3 so you have the monthly update on where we are on
4 goals versus last year; where we are on setting
5 goals for this year. We can talk about the best
6 way for you guys to be updated and for us to be
7 transparent. But balancing those goals, to me, is
8 critical. And here are the two things that keep me
9 up at night: one, making sure we're setting the
10 right goals. Obviously, if you read any of the
11 gurus or anything else, the difference between
12 management and leadership: leadership is involved
13 with setting the right goals; management is meeting
14 your goals. We have to set the right goals. I
15 think in a lot of ways we have, but we don't know
16 for sure. And that's one of the things we're
17 asking PPAC: help us set the right goals for the
18 system as a whole. And secondly -- and this is
19 critical to me as I look at what we're doing at the
20 PTO -- executing and sustaining high performance:
21 literally breaking records every year. I think
22 that we have to be able -- we are a performance --

1 based organization. There are limits to what we
2 are as a business model, because we are a
3 government organization granting a service to
4 everyone who comes in the door. We don't get to
5 choose who to provide service to and who not to
6 provide service. We don't control price. But we
7 certainly have a lot of areas where we can manage
8 like a business. It is critical, I think, in
9 balancing the many competing goals we have -- we
10 have to balance them, and we have to execute and
11 sustain high performance. And that's been
12 critical, I think, for credibility for the Office,
13 as well -- with Congress, with the Administration,
14 and outside. The second thing that keeps me up --
15 and it's related: the need to have a common
16 understanding of the challenges facing the IP
17 system, and the challenges facing the agency --
18 both in and outside of the agency. And that goes
19 back to setting the right goals. Step one, truly
20 -- and this is where PPAC I think is critical -- is
21 to have a common understanding of the challenges
22 that face the system. There really are true

1 arguments out there, even among incredibly
2 intelligent people who support intellectual
3 property -- not to mention the battles between
4 people who don't like the fundamental intellectual
5 property system and those who don't -- but
6 fundamental arguments about what really are the
7 challenges facing the IP system; and, specifically
8 as Director, what challenges are facing the agency?
9 So what truly keeps me up at night is the thought
10 that we might be Cassandra, or Alexandra, where we
11 have the ability to predict the future, but no one
12 believes us. And that's what I really want --
13 critically important to me to have PPAC help us
14 understand and get a common understanding of what
15 the challenges are. Because the next step then, is
16 to get on the path to solve those challenges. But
17 if people don't agree what the challenges are, if
18 people don't think the goals are the same, we don't
19 garner the support for the intellectual property
20 system or the direction for the Patent and
21 Trademark Office in the U.S. -- and, quite
22 honestly, if you direct the U.S. Patent and

1 Trademark Office, you direct the patent and
2 trademark offices throughout the world. That is
3 still the case, and I believe will be the case for
4 decades to come. But we want to be able to share
5 the knowledge we have, have it challenged, and come
6 to a common understanding. The third thing is
7 something that Dean alluded to: just as we get --
8 and this is very much more Undersecretary for
9 Intellectual Property but, again, I think something
10 that you all are critically involved in -- just as
11 we get what the world wants -- what we want for the
12 world; just as other nations are developing and
13 innovating, just as other nations are understanding
14 the importance that we can all grow our economies;
15 that intellectual property is critical to that;
16 that knowledge-based economies are the future, not
17 just for the United States but throughout the world
18 -- just as we're getting successful on that on so
19 many fronts, are we undermining our own
20 intellectual property system because of short-term
21 goals of people who don't appreciate the
22 intellectual property system in the United States?

1 So, make no mistake about it -- well, in my
2 opinion: the people who have problems, issues,
3 concerns, or don't like the intellectual property
4 system in the United States are loud. They're
5 vocal. They're having their day. They're able to
6 communicate their message. And we need to make
7 certain that if we believe in this intellectual
8 property system -- and it cannot come solely -- and
9 it probably can't even come primarily from the U.S.
10 Patent and Trademark Office, because we do have a
11 vested interest in this system and it could be
12 considered a selfish interest. But we need to make
13 certain that we're leading the battle in the U.S.
14 and internationally for why this is fundamentally
15 the right system. And decisions can be made in
16 Congress, and decisions can be made in other
17 nations, that might not be at all based on logic.
18 That's a possibility. But this really should be a
19 group to help us communicate that. And if you read
20 editorials on the patent system there's a dearth of
21 editorials explaining why it's the right system.
22 And yet the vast majority of people who understand

1 the system think it is. But I can't tell you how
2 many just facts are wrong in editorials. And that
3 is having an effect, and will continue to have an
4 effect. It might even get into some judicial
5 opinions -- that read like Wall Street Journal
6 editorials. The fourth issue that keeps me up at
7 night, which is also related, is that I don't think
8 we hear -- effectively hear -- from everyone who's
9 affected by the system. I don't think many outside
10 the United States Patent and Trademark Office fully
11 understand the challenges that our examiners face.
12 I think PPAC has a pretty good understanding of
13 that. I think we have the right representation to
14 be able to do that. I think the management of the
15 PTO is doing a better job of understanding that,
16 but we need to do even more. But not just our
17 issues to the outside -- that's important, but we
18 recognize we need to be held to the highest
19 standard, because we do run the Patent and
20 Trademark Office, but I'm not certain we hear from
21 everyone outside the office. Certainly, in the
22 debates that we have, there are people who have a

1 lot of money and a lot of interests, and their
2 voices are heard. I don't know -- I don't think
3 that everyone's voices are heard. When we sit down
4 and hear from people that they're not concerned
5 about pendency -- and we hear that from many
6 people -- in an organized fashion, I don't think
7 we're hearing from start-up companies, from
8 individual inventors. I think there's a lot of
9 people out there who don't have a method to
10 organize their voice but are critically important.
11 Seventy-five percent of the growth of the U.S.
12 economy is coming from small businesses. This is a
13 bit anecdotal, and a bit empirical, but:
14 breakthrough technologies are still coming, not
15 primarily, but are coming in a disproportionate way
16 from the United States. And we need to make
17 certain that we're looking at the system over the
18 next five years, and the next 10 years, so that
19 we're inspiring those people who we don't even know
20 who are going to be the next great inventors. So
21 we need to find a way -- and I think PPAC can help
22 us. We've tried to balance the membership so that

1 you can help us hear from people who we wouldn't
2 traditionally hear from, and make certain they're a
3 part of the system. So those are the four things
4 that keep me up at night. What keeps you up at
5 night? Me calling him at two o'clock in the
6 morning.

7 COMMISSIONER DOLL: If Jon's concerned,
8 I'm concerned -- trust me. But I'll talk a little
9 more on an operational level rather than the
10 higher level, because the most important thing
11 that Jon and I talk about a lot is quality:
12 maintaining quality, improving quality. Because
13 the most important thing, I think, to the person
14 that actually gets that patent is whether or not
15 they can defend it at some point in time; whether
16 they can use it as an offensive tool to go out and
17 actually stop somebody from infringing or
18 manufacturing their products. We're got a lot of
19 plans on the table -- and I think we'll talk about
20 that a little later today -- about things that we
21 are doing and planning to do, and plan to talk
22 about doing -- how to make that better; how to

1 make the examiners' quality better. You've got to
2 understand what the examiner -- the pressure that
3 he works under. And Jon alluded to this, but I'll
4 be really clear in saying that the average
5 examiner has 20.4 hours to find the case, read the
6 case, draft or understand the claims, do the
7 search, and then do every office action from a
8 restriction, a first action, a final rejection,
9 advisory action, and then maybe write an
10 examiner's answer. That's on average. That's an
11 awful lot of work. Earlier I showed Andrea a
12 claim that we recently have gotten. What we're
13 getting through the door is simply out of control
14 -- and this is something that Jon has talked about
15 a lot -- and that's application quality; what you
16 can do to make that application quality better for
17 us. Some of the claims that we're getting, some
18 of the applications we're getting, are
19 ridiculously broad. And I understand that the
20 attorney's job is to get all of the protection
21 that the applicant deserves. It's the examiner's
22 job to give you what you're legally entitled to.

1 Somewhere along the line I think we need to
2 improve that quality coming in the door, and then
3 help the examiners do a better job. So quality I
4 think is one of the things that Jon and I spend an
5 awful lot of time talking about and trying to help
6 the examiner do a better job for applicants. The
7 next thing that really bothers us -- and that Jon
8 and I have spent a huge amount of time talking
9 about and trying to understand and work on -- and
10 that's the backlog. And I think you've seen the
11 numbers. You've heard Jon talk about it, you've
12 heard me talk about it -- Peggy, and John Love --
13 every time we go out we talk about the numbers.
14 If we continue the way we're going, if we get an 8
15 percent application filing rate increase every
16 year -- and that may be conservative, because it
17 was 8.7 this year; if we continue to hire 1,000 to
18 1,200 examiners a year, and we do that for the
19 next five years, in 2010 or 2011, we have 1.3
20 million cases in the backlog, and pendency
21 skyrockets to over 40 months to first action. I
22 think that's unacceptable to the people that use

1 the patent system, and I think it's one of the
2 things that PPAC -- you know, I would really
3 appreciate getting some input as to what we can do
4 to work on the backlog, to do a better job on
5 quality. We're talked about hiring -- and Jon's
6 used statistics before -- where when you look at
7 the people that we hire, when you look at hiring
8 1,200 patent examiners a year that have to be U.S.
9 citizens, and the vast majority of them come from
10 east of the Mississippi, because we have a
11 difficult time recruiting and getting people to
12 come to the East Coast from the West Coast. We've
13 got some ideas on how to work on recruitment, how
14 to work on retention. But I know Dean is very
15 interested in retention, and we're very interested
16 in retention. We actually, at the mid-year, we
17 were heading towards a 14 percent attrition rate
18 based on a cyclic average. We ended the year at
19 10.6 -- which was a phenomenal turnaround --
20 because we were able to institute
21 retention/recruitment bonuses to the people in
22 electrical engineering and computer engineering,

1 where there's the biggest demand for them.

2 MR. KAMEN: (off mike) found that, by the
3 way.

4 COMMISSIONER DOLL: Thank you. I mean, it
5 was big effort, and a lot of people in the office
6 put forth a lot of hard work. One of the other
7 things is that Jon has been pushing very hard, and
8 working with OPM, to get a 10 percent
9 across-the-board pay increase for all examiners.
10 That, in conjunction with the
11 recruitment/retention bonuses that we've been able
12 to roll out, drove that rate down to 10.6 at the
13 end of the year. And, again, if you hear Jon
14 talk, or you hear me talk, you hear us talk about
15 retention in high-tech industries. And we're
16 really doing very well; we're doing better than
17 the government as a whole, on average; and we're
18 doing better than a lot of high-tech corporations
19 that hire and have as many employees as we have.
20 To do that -- we talk about employee morale, which
21 is extremely important, because a year or two ago
22 morale, I think, was low; there wasn't very good

1 communications. We scored very poorly on internal
2 communications from the top down to the examiners,
3 showing them that we care, what our goals were,
4 and what we were trying to do to help them. We've
5 been working on that a lot. We just had a huge
6 celebration -- you know, the Under Secretary
7 organized and spoke to the employees. They love
8 it when we get out there and talk to them and
9 express why they're important, and why they are
10 our most valuable resource. And that really sums
11 up what I think drives me crazy at night: quality
12 and efficiency, and trying to keep up with Jon
13 Dudas.

14 CHAIRMAN RIVETTE: Mr. Love?

15 MR. LOVE: Oh, I get to weigh in?

16 CHAIRMAN RIVETTE: Absolutely.

17 MR. LOVE: Well, to me the backlog -- just
18 the thought of having a million cases waiting for
19 action is rather daunting. And the solutions that
20 we've talking about and trying to get a consensus
21 on how to approach it. I also agree very much
22 with John Doll: it's a partnership here. The

1 Office and the IP community need to get together
2 and figure out how we can more efficiently and
3 effectively do the workload. I think for various
4 reasons cases come into our office. You know, the
5 output is directly dependent on what the input is.
6 And for various reasons, the input isn't as good
7 as we think it could be. So if we get some
8 consensus and discussions going on how that could
9 be improved, I think that would go a long way. So
10 those are probably the two areas that I'm
11 concerned about the most, is this enormous growing
12 backlog. You know, we're not even able to keep up
13 with what's coming in the door, even though we've
14 hired 1,200 people. So we can't keep up with
15 what's coming in the door, and therefore we're not
16 even able to get to the backlog either. So it's a
17 double problem. And we need to rally address that
18 and get that under control.

19 CHAIRMAN RIVETTE: Any other small issues?

20 MR. LOVE: I think there are ways -- I'm
21 concerned -- I looked at the rule book as I was
22 unpacking my office: you know, what it looked like

1 in 1980, and what it looks like today; what the
2 MPEP looks like 20 years ago and what it looks
3 like today.

4 CHAIRMAN RIVETTE: It didn't look good 20
5 years ago.

6 MR. LOVE: Then imagine what it looks like
7 now. I look at some of our rules and, you know,
8 they're starting to rival the IRS regulations and
9 statutes. And the job of an examiner is getting
10 much, much more complex, in terms of what they
11 need to know, their skill sets. So one of the
12 things that I would like to see also -- and,
13 fortunately, I'm hopefully in a position to at
14 least start to look at it -- is to simplify the
15 rules, give the examiners clear direction on how
16 to examine applications and what we expect from
17 them, and get them focused on what they need to do
18 -- and hopefully that would improve the overall
19 process and help with the efficiency issue.

20 CHAIRMAN RIVETTE: It would probably help
21 retention, too.

22 MR. LOVE: It may help retention.

1 Certainly, the examiner's job has changed so
2 drastically -- it really has. It sounds like a
3 cliché, but just what they're expected to know,
4 the complexity of the rules, the complexity of the
5 law -- it's a very difficult job?

6 CHAIRMAN RIVETTE: John?

7 COMMISSIONER DOLL: I had one thing that I
8 wanted to add that Jon brought up that I totally
9 forgot. When I was talking about communications I
10 really did want to talk about communications with
11 the outside. Because I think there is a
12 perception out there that we aren't listening;
13 that we don't care; that we don't want their
14 input. I think the Office has been extremely
15 transparent and open with respect to the notice of
16 proposed rulemaking, where we did ask for
17 comments. Everybody that went out and talked
18 honestly stood up there and said: "If you have a
19 better idea, tell us, and we'll throw away what we
20 have." And for some reason that message isn't
21 getting out there. So if you could help us
22 somehow articulate that better, or really show

1 that we are listening, that we do care, and we
2 honestly mean that all we're trying to do is
3 improve quality and work into the backlog so the
4 patentees can get their patents in a timely
5 fashion, we would do anything -- just about
6 anything -- to make that happen. Our rules
7 packages are just our best shot at what we thought
8 we could. And, you know, right now John and Steve
9 are thinking a lot about whether they should.
10 We've listened to all of the input. What we were
11 looking for. and what we didn't get a lot of --
12 and this sounds probably more critical than it is
13 -- we didn't get a lot of suggestions. We heard a
14 lot of reasons as to why the people on the outside
15 didn't like them, or what they would like to have,
16 but not how we could actually solve the problems
17 that we have.

18 CHAIRMAN RIVETTE: Max?

19 MR. GRANT: Well, I was just going to say
20 one thing, which kind of chimes in with what Dean
21 was saying. From what I'm hearing, people are
22 making negative comments about rule packages and

1 so on, but part of the reason is: they don't
2 understand the problem. They don't understand
3 that there is no way to hire your way out of the
4 backlog and the pendency issue -- even if you
5 weren't concerned with quality. And I think part
6 of the challenge is to adequately describe the
7 problem, and then once you understand that, then
8 the tradeoffs that are inherent in some of the
9 solutions that are being proposed start making a
10 lot more sense. And I think the world is sort of
11 thinking: it's a patent office; it's got a big
12 budget; they've got a lot of people working there
13 -- nothing's changing. We send the stuff over
14 there, and they'll process applications. And I
15 don't understand why things are slowing down.
16 They weren't slow 10 years ago -- or they weren't
17 as slow. And I think the magnitude of the
18 problem, which is a combination of how the
19 economies are evolving, the importance of IP, the
20 increased efforts of people to gain both offensive
21 and defensive protection is leading to this
22 dramatic increased demand. And people don't

1 understand just how that impacts what the PTO is
2 doing. That's my observation.

3 COMMISSIONER DOLL: It's a good point, and
4 I don't mean to sound defensive. We went out and
5 we did a lot of town hall meetings. We went
6 across the country. We invited people in. We had
7 a lot of charts and graphs -- trying to show. But
8 one of the biggest problems I think we have is
9 actually getting through to the bar group.
10 Attorneys are busy. I mean, you're out there
11 cranking out actions just like we are, and a lot
12 of times I hear people on panels say things that
13 just totally aren't true. They don't know that
14 you can have an interview before first office
15 action -- not that we didn't publish it in the OG,
16 but because the attorneys didn't have time to sit
17 down and read the OG that week. And I'm not sure
18 how to do a better outreach to get out --

19 MR. GRANT: But I mean even at the much
20 more fundamental level. I mean, you know, I don't
21 prosecute patents for a living, and I know sort of
22 the details that you're talking about, but I mean

1 almost at the level that Dean's talking about. I
2 think a lot of the public and the key
3 decision-makers, and potentially even some judges
4 who may not be judges with patent expertise, they
5 don't understand that the patent applications are
6 coming in so fast that you just can't keep up with
7 them; and that that increase in application rate
8 is only growing. I mean, just that very
9 simplistic big problem, I don't think a lot of the
10 community understands it.

11 UNDER SECRETARY DUDAS: I would also just
12 point out -- to add another layer, just briefly,
13 which is: you know, we're under a million -- in
14 fact, 700,000 backlog right now. We're the
15 largest office in the world. European patent
16 office, Japanese patent office and U.S. PTO are, I
17 think, now 56 percent of all applications in the
18 world -- which is significant, because a few years
19 ago we were 85 percent. But the worldwide
20 backlog, as estimated by WIPO -- World
21 Intellectual Property Organization -- is 17
22 million. And we would actually probably drop 2

1 million on that, because they're counting PCT.
2 Let's take a conservative 15 million application
3 backlog -- a lot of those are U.S. applicants
4 overseas, as well. So when we look at the system
5 -- I want to point out: we have to present the
6 problem across the board, and then get the
7 solutions that are across the board. So, you
8 know, again there are these -- I'm going to launch
9 -- so -- 15 million backlog at WIPO throughout the
10 world, that needs to be addressed. And there are
11 many growing patent offices throughout world where
12 U.S. interests are that don't have any sort of way
13 out. And there are international strategies that
14 we can engage in. The other thing I'd point out
15 -- I know Bob's going to remember this, and Cathy
16 as well -- but maybe there is a better way to
17 communicate it. At one point there was a rumor --
18 or I guess it was made even into a report -- that
19 there are machines that can do what patent
20 examiners do. And when it got to that point, we
21 realized -- you know, we can get past that. But
22 maybe we just need to frame this as simply as it

1 is so people understand it and will face it. And
2 we will get to the cost benefit and the tradeoffs.
3 MR. GRANT: The last thing I'll say -- and
4 then I'll be quiet for a bit: you know, the real
5 constituency is business and inventors. I mean, I
6 understand that the Patent Office, probably
7 appropriately, looks at patent prosecutors and the
8 prosecution bar as being constituency in the sense
9 that that's the people you deal day-to-day with.
10 But the constituency that matters is business.
11 And what business wants is some level of
12 certainty. And if we tilt the scale a little in
13 one direction or another, my experience is --
14 advising businesses -- they're okay with that,
15 because what the real point is is to be able to do
16 business planning with some certainty. So I think
17 if we recognize that that's the constituency that
18 needs to understand the problem, then perhaps, as
19 we work through the details, we'll stop having the
20 tail wag the dog, which I think happens a little
21 bit with the prosecution bar and the real
22 constituency.

1 UNDER SECRETARY DUDAS: And business is
2 who's going to be able to make meaningful
3 tradeoffs.

4 MR. GRANT: Right. Exactly.

5 COMMISSIONER DOLL: It's difficult for us
6 to get to those people, though. It's difficult to
7 get into the corporations at the CEO level, or at
8 the decision-making level. Because what happens
9 is that when we call a meeting, they send their
10 patent attorneys; they send their chief patent
11 counsel. Because they may not understand the
12 system well enough. So what you're saying is
13 absolutely right, but Jon and I have been
14 frustrated by trying to get to those people. And
15 Dean and I talked, and we were actually going to
16 work with Doug, because I think at one point you
17 said you'd open up your Rolodex to get to CEOs.

18 MR. PATTON: Yeah? Is that true?

19 CHAIRMAN RIVETTE: But before we do that

20 --

21 COMMISSIONER DOLL: Well, I was hoping he
22 would just --

1 CHAIRMAN RIVETTE: Doug said I could call.

2 MR. PATTON: I've got my Outlook on my
3 computer. But I have a lot to comment on that,
4 but I'll yield to what Kevin --

5 CHAIRMAN RIVETTE: No, no, no -- what I
6 wanted was your comment. And also you've got a
7 comment, Dave.

8 MR. WESTERGARD: My comment is that --
9 what you were making about the constituency. I
10 mean, I think that's truly something that the PTO
11 should focus on, and that is: is it really the
12 users, the business of the world, or of the U.S.,
13 the applicants, that are the constituents of the
14 PTO? Or isn't there a public interest here?
15 Because the whole system is developed to advance
16 globally the useful arts, and to improve advances
17 in technology. And I think we've come into a
18 world where the system is actually becoming more
19 of an impediment to growth, and it might even be
20 becoming an incentive to off-shoring R&D and the
21 like because patents are too easy to get; there are
22 too many applicants taking advantage of the burden

1 and the backlog of PTO, to provide sloppy input.
2 And I've heard a lot of the comments from the
3 three Johns about how the input is not up to par.
4 And I think that the PTO can impose more
5 requirements on applicants to come to the table
6 with better input. And so I applaud the efforts
7 of PTO to try to force that on the applicants, and
8 that's what I think a lot of the resistance is
9 coming from, is because it's changing settled
10 expectations. And that's a point where we're
11 trying to upset inertia, and that is going to be
12 opposed by those who are benefitting from the
13 status quo. So it's going to take leadership, and
14 it's going to take explanations to Congress and
15 the policy-makers to justify why there needs to be
16 a re- set of expectations. And so I think it is a
17 daunting challenge but that, I think, is the
18 fundamental issue that's facing the system.

19 CHAIRMAN RIVETTE: Doug?

20 MR. PATTON: I remember when I first met
21 Jon Dudas Secretary Gutierrez came to our neck of
22 the woods in Irvine, and there were a lot of CEOs

1 at the table. And I remember the CEO of Broadcom
2 stating -- you know, his patent attorney was
3 there, but he was talking. And this was one of my
4 questions -- I have a lot to learn, and I haven't
5 been acting on it. I was waiting for this group
6 meeting. But the kind of work I do, I work a lot
7 with a lot of the top CEOs. And I've just
8 mentioned to them that I'm a member, and I don't
9 know what it means yet. And I said, "What's your
10 opinion?" And there's some very strong opinions
11 of -- you know, maybe it's not true, or it's not
12 based completely on logic but it's more of an
13 emotional reaction of how they feel. And, you
14 know, everything I'm writing down, just about
15 every two minutes I'm learning something new and
16 trying to put together a formulation in my mind of
17 what -- how can this incredible amount of -- you
18 know, the things you said, the competing goals;
19 setting the right goals; executing and sustaining
20 the goals; the common understanding of the goals.
21 You know, you said those four points, and in the
22 past half an hour everything is relating to that.

1 It's an incredible journey we have in front of us
2 as members of PPAC. This is not trivial. This is
3 an incredible journey of things that go to the
4 public interest. And, you know, that's what a lot
5 of the CEOs I talk to, they're worried about the
6 U.S. competitiveness. I mean, that's always where
7 it ends up. And what you were saying about how
8 the business issue, the public interest, the
9 system hindering development -- I think this is an
10 incredible topic. Because what I think about is:
11 where's the U.S. going to be competitively in 10
12 or 20 years. That, to me, is my big goal -- and
13 everyone I talk to, all the CEOs. And the
14 underlying issue here is: is the system hindering
15 the development of where the U.S. wants to be
16 competitively, internationally, in 10 or 20 years.
17 And with all the brilliant minds here, it would be
18 a great subject to discuss at that high level.
19 I'll put this as a question: is that a direct
20 output or responsibility, to some extent, of the
21 Patent and Trademark Office? Is it some other
22 part of the government that's interested in

1 maintaining that competitive advantage of the U.S.
2 against international concerns? Or is it here?
3 Just a question. I'm sure it's just partially,
4 but --

5 UNDER SECRETARY DUDAS: You know, in a way
6 it's both. I mean, there are many. I mean, right
7 into the White House talking about American
8 Competitiveness Initiative, and MIST, and there
9 are very specific agencies that are involved. But
10 the reason I think this is the most important
11 agency in the world, if you will, is because we
12 have to get this not just right, but the best it
13 can possibly be in order to have innovation and
14 competitiveness. So I think, fundamentally, we
15 play a key role in that. And, again, I think it's
16 probably wise -- there are some down-sides to
17 having the Director be the Under Secretary for IP,
18 but you can't separate that what happens in this
19 office is the key to IP, which is a key to
20 innovation and competitiveness. So I think we
21 have that responsibility. But we are not the
22 agency tasked with: make sure America's

1 competitive. I would say that goes right to the
2 President.

3 CHAIRMAN RIVETTE: Gerry?

4 MR. MOSSINGHOFF: I don't disagree with
5 Max on the issue of the audience that you're
6 addressing. But I really believe it's somewhat
7 unrealistic to think you're going to get to a CEO
8 and run around the patent counsel. If the CEO
9 doesn't believe everything the patent counsel
10 tells him about what's going on in the U.S. Patent
11 and Trademark Office, he ought to fire him or her
12 and get a new patent counsel. You're just not
13 going to do it. I participated in an informal
14 meeting here with Jon and others, and we had a
15 pre-meeting over at the Oblan firm -- a lunch and
16 a pre-meeting. And there was a very strong
17 feeling -- which I didn't share one way or the
18 other because I was ignorant of it -- by some very
19 responsible people -- and I'll use some names:
20 Mike Kirk, Herb Womsley -- people who really have
21 a ton of credibility on each side of the aisle on
22 the Hill -- that said there was a different

1 approach to the 21st Century Strategic Plan than
2 there was, for example, the rulemaking on
3 continuations. One was participative, they felt
4 like they had into it. The others they felt like
5 the office just said: "This is what we're going to
6 do. If you don't like it, lump it -- we're going
7 to do it." And there are very strong feelings
8 that that occurs. Now whether or not -- you're
9 shaking your head and saying that's not what
10 happened. But I'm telling you the feeling exists
11 out there that that's exactly what happened.

12 COMMISSIONER DOLL: How do we change that?

13 CHAIRMAN RIVETTE: I've got some ideas --
14 but just keep going.

15 MR. MOSSINGHOFF: Let me go on with that.
16 The thing that I've seen lacking -- and it's
17 probably based on everyone's a creature of their
18 own history -- is a Presidential, or at least
19 Secretarial enunciation of a goal having to do
20 with pendency. And I've been talking about that
21 for a long time on PPAC. Where are we going to be
22 in the year -- fill in the blank. We've got a

1 whole bunch of strategic -- 31, I think --
2 strategic directions. I'd like to see XX changed
3 into a Presidential or a Secretarial goal to tell
4 me what is the overall goal of the U.S. Patent and
5 Trademark Office in terms of pendency -- whatever
6 assumptions you need. All I see are scenarios.
7 The Office's scenarios have scenarios. All I've
8 seen are scenarios. I haven't seen any management
9 leadership goal saying: Here's what it's going to
10 be, come hell or high water. We're going to make
11 X pendency by this month; close of business of
12 this year; and it's going to Y here, and it's
13 going to be Z there. I haven't seen that, and
14 it's inconceivable to me that we could achieve
15 something if we don't even know what it is we're
16 trying to achieve. And that's my overall comment.
17 And it's not a new comment. I've made that
18 comment before in this forum.

19 CHAIRMAN RIVETTE: I'd like to take and
20 shelve it for about a couple hours, and resurrect
21 this at 1:30 to 2:00, because that's what that
22 session -- discussing the Office goal setting and

1 objectives -- is about. I'd like to go through
2 that in some real detail, Gerry, and ask what it's
3 going to take, and why. You know, what are the
4 concerns on both sides? Why is the perception
5 what you think it is? What's the perception from
6 the Office on why? Do they feel they've done or
7 not done it? What are the issues? So what I'd
8 like to do is lay this one bare in that time
9 period. That's why it was specifically set up
10 that way. So, if you don't mind --

11 MR. MOSSINGHOFF: No.

12 CHAIRMAN RIVETTE: I'd like to just shelve
13 it for a little bit.

14 MR. MOSSINGHOFF: I've been doing this for
15 a number of years -- so I can wait around for a
16 couple hours.

17 CHAIRMAN RIVETTE: You don't mind. I'd
18 like to make a comment at this point on what I've
19 just heard -- actually two comments. One is:
20 let's keep the discussion going. We've got all
21 three Johns here. It's a great time to ask all
22 the questions everybody's had. And it's an open

1 session for the next 25 minutes. The second part
2 of it is: I hear two things. From Dean, I hear a
3 communications issue, and from John Doll I hear a
4 process issue. So I hear we've got issues around:
5 how do we get the information out? But then we've
6 also got issues of: why isn't it working when we
7 go to them? And I think there's two different
8 things. I think there is a process issue on if
9 you're going to come up with new ideas like the
10 rules changes, like the patent products -- those
11 sort of things -- if they are not handled properly
12 they will automatically fail. And I think there's
13 a process that we probably don't have in place yet
14 that we should look clearly at. To Doug -- it's
15 one of the things I alluded to before. I think
16 there is a products requirement document. I think
17 there is a process by which you gather the right
18 data. What is the data we need? And from whom do
19 we gather it? Over what period of time? And then
20 when you do go out, how do you actually structure
21 those working sessions with the AIPLA? With Mike
22 Kirk? With Herb Womsley -- so that they're

1 involved? Because you're right: you're not going
2 to get there from here if you've got impediments
3 such as those. On the other side, I think -- you
4 know, Max, we've got to speak to -- and this is
5 now the communications side -- we've got to speak
6 to the business people. It just can't be through
7 the AIPLA. I think that's a voice, but I don't
8 think that's the only voice. I think you've got
9 to get to the other party. I mean, I know from my
10 organization that we have a head of intellectual
11 property -- the law side -- and then we've also
12 got the SAM and the NICL side, which -- they take
13 that input, but that input usually goes through a
14 general counsel and they'll sit with them. But if
15 we could also get a communications plan that goes
16 to speak to them personally. Because they hear
17 different things than the lawyers do, and they
18 will go back to the lawyers to check it out. So I
19 think there's a communications and a process side,
20 is the way I see this.

21 MR. PATTON: I have a question. I'm not
22 sure who mentioned it, with changes in -- recently

1 in the Congress and Senate and so forth. Are
2 there Congressmen and Senators that have great
3 empathy to these issues? I know, where I started
4 out, I had the great opportunity to talk with
5 Congressman Sensenbrenner for a long time. He
6 came to my office and asked my thoughts, which I
7 thought was amazing. And, you know, obviously
8 that's one; the judiciary is one. But I guess
9 what my question is: do we need to create our
10 goals in some way wrapped around people in
11 Congress or Senate who can actually be empathetic
12 and help, and getting their input about what they
13 think is possible is important. Because it's my
14 understanding that anything that happens -- and
15 excuse my ignorance -- in the Patent Office, if
16 there's a rule change or something, doesn't that
17 have to go to Congress?

18 UNDER SECRETARY DUDAS: No.

19 MR. PATTON: We can do it, unequivocally,
20 without --

21 UNDER SECRETARY DUDAS: Congress can stop
22 us.

1 MR. PATTON: How do we not let them stop
2 us? I guess that's my --

3 MR. PATTON: Is that possible?

4 UNDER SECRETARY DUDAS: Do you want to --

5 MS. RYAN: Well, I mean, Jon comes with a
6 great deal more background. I agree -- I have
7 that same naivete. But, there's one issue that
8 we've been silent on, and you gave me a great
9 segue to this, is: you talk about communicating
10 with the bar. I think the bar -- and the bar
11 coming back and being negative. And Gerry talks
12 about AIPLA, and IPO -- and I know almost
13 different plays. And that's why Congress is so
14 important. I think the big pushback that you're
15 getting, I think that if you scratch the very
16 bottom of people's feelings about the rule
17 changes, they're empathetic. But the big problem
18 which the Patent Office can't change and that only
19 Congress can change, and what we've developed in
20 the 30 years I've been practicing -- and I took
21 note when we were talking this litigation -- it's
22 inequitable conduct. When I started practicing in

1 1976, I wrote information disclosure statements
2 that said why the Act was relevant.

3 UNDER SECRETARY DUDAS: We loved you.

4 MS. RYAN: But that was the practice --
5 that was the practice. That was the way I was
6 taught. But we've come from 1976 to 2006 and
7 things have changed.

8 UNDER SECRETARY DUDAS: Well, there's
9 classes on how to withhold information. No,
10 truly. I didn't mean that as a negative. There
11 truly are classes about how to withhold
12 information.

13 MS. RYAN: But how do we reverse the clock
14 back to what -- where did -- we all know where
15 inequitable conduct came from, but that's the
16 third branch of government. And you have to --

17 UNDER SECRETARY DUDAS: It's the first
18 branch.

19 MS. RYAN: Right -- it is.

20 UNDER SECRETARY DUDAS: Unfortunately.

21 MS. RYAN: It is. But it all ties
22 together. But I know the Patent Office probably

1 wants to say -- and I'll say heresy -- not heresy
2 to you -- but, I mean, if you were to pass these
3 rule packages, I ask myself -- everybody says,
4 "Well, we can't have this because we can't do it.
5 It's inequitable conduct." But would the system
6 readjust somehow? Would there be a litigation
7 where then it goes to the courts and they say,
8 "Well, of course that's not what it means." Would
9 that readjust the system?

10 UNDER SECRETARY DUDAS: Right -- the
11 courts haven't punished anybody for withholding
12 information yet, either. No, no -- there's no
13 question that certain -- again, if you have -- I'm
14 not commenting on the rules package generally, but
15 if you have rules, you have certainty, there's no
16 question people adjust. The law has changed.

17 I guess good news- bad news. I came from
18 Hill -- although I worked for the team that lost on
19 Tuesday. But we have an excellent relationship
20 with the committees. The people who are most
21 committed to intellectual property are Jim
22 Sensenbrenner's committee, which is the House

1 Judiciary Committee; and then, specifically, the
2 Subcommittee on Courts and Intellectual Property.
3 And in the Senate you have the same thing:
4 Judiciary Committee. And in the past you had
5 legislation that, if it were agreed upon there, it
6 sailed through because no one understood it.
7 Bankruptcy goes through the same committee;
8 antitrust -- too complex. It's figured out. Once
9 you get that figured out, it goes through. That's
10 no longer the case. The only debate that was more
11 raucous and passionate, that I saw on the House
12 floor -- after hundreds of debates on the House
13 floor -- than impeachment was the AIPA, where
14 members were literally screaming over each other:
15 "You're a traitor, and you're not part of the
16 United States." So it's involved in trade issues,
17 it's involved in -- you know, it's the first time I
18 ever heard a Member of Congress scream the F-word
19 at me on the floor. And it wasn't "friend." So
20 it's no longer the case. If you look at Congress,
21 it's like a baseball game. You go through the
22 subcommittee, the full committee and the House and

1 the subcommittee and full committee in the Senate.
2 And then you've got two more innings where you work
3 it all out, and then the President signs. Right
4 now, in the debate that's going on right now, we're
5 not out of the first inning. We're not out of the
6 bottom of the first inning, if you look at it in
7 those terms. But that's the place where people are
8 sympathetic. It's also the place where the debate
9 is. I would not say that every member of Congress,
10 even on that subcommittee, is as informed and
11 knowledgeable about IP as folks are here. And I
12 would say that there's a campaign to characterize
13 the IP system in a certain light. And some are
14 very up-front and honest, and some are not quite so
15 honest. Cases that are out there that make the
16 press are manipulated, and comments are made about
17 examiners or the agency as a whole that require
18 education. Now, the downside: what used to happen
19 -- the reason we were able to sail through after
20 the subcommittee was because it was under the radar
21 screen. You know, this is not a war, this is not
22 homeland security. But we still have a little bit

1 of the detriment of Members of Congress are focused
2 on their top five priorities. There's only a few
3 who include IP among them -- very, very few. And
4 they have to deal with the issue of the day. And
5 so it has that complexity, but it also has -- the
6 proxy is often: "Well, let's agree first." And
7 it's just not that easy to get agreement any
8 longer; to get everybody to agree. We can talk
9 more about that, but that's a challenge, it's not
10 some kind of obstacle. And on rules packages,
11 that's from the Administration. But certainly
12 Congress can say: "We supply you no funds to
13 implement your rules package."

14 MR. PATTON: See, that's my worry, is, you
15 know -- hiring; we can't hire our way out of this,
16 but certainly it helps, and a budget is associated
17 with that.

18 UNDER SECRETARY DUDAS: Yes.

19 MR. PATTON: And I heard in one of the
20 telephone conversations we had: you know, what if
21 the budget gets cut back? Or what if it
22 increases? I mean, increasing it, and

1 communication and marketing that issue as a
2 national competitiveness issue, it would seem that
3 everyone -- that no Congressman to Senator would
4 want to not be on that side.

5 UNDER SECRETARY DUDAS: You know, in a lot
6 of ways -- and there's great news after 15 years
7 of diverting money away from the PTO, we've had
8 three years of the Office keeping all their funds.
9 After a huge battle with people very high up in
10 the Administration, the last meeting I went to it
11 was stated -- this will stay within the room --
12 but this is established Administration policy that
13 the Patent and Trademark Office receives all of
14 its fees -- which was an incredible victory. The
15 same guy that I fought with every year. So that's
16 great news. But I would say that your point about
17 more money: you have to couple more money for the
18 Office with the ability to use the money. We used
19 to have hiring caps. We now have hiring floors.
20 I'd argue you shouldn't have either one. But you
21 can have hiring floors or -- in the past, the
22 Office had had hiring caps, so more money wouldn't

1 necessarily make a difference. I think we're at
2 the cusp of the maximum amount of money that you
3 can pay a patent examiner, with a retention and
4 recruitment bonus. And we're working with Bob and
5 others to get a 10 percent pay increase. So if we
6 look at increasing resources, we also have to look
7 at changing the rules to allow for use of more
8 money. So I shock Members of Congress by saying:
9 more money, in and of itself, is not going to
10 solve the problem. At some point -- 1,200
11 examiners a year -- at some point we have to ask
12 the policy question: do we want to hire 2,500
13 examiners a year? Just do we want that many
14 people examining patents? And, secondly, you have
15 to recognize that an office with 5,000 examiners
16 is not as easy as an office with 1,000; a
17 10,000-examiner office is not as easy as one with
18 20,000. And the consistency that you talk about
19 can and will suffer from that. So that's kind of
20 an overall picture. I'm sorry, I didn't mean to
21 -- you looked like you were --

22 MR. MOSSINGHOFF: No, actually Jon knows

1 infinitely more about this than I do, but my
2 general impression -- somewhat informed is that IP
3 on the various Judiciary Committees has been
4 generally bipartisan. S. 3818, which is the
5 Senate version of the Patent Reform, is
6 co-sponsored by Hatch and Leahy, so it's
7 automatically bi-partisan going in. In my class
8 at GW I had the staff directors, House and Senate
9 -- Democratic staff directors -- and they're very
10 non-partisan on the issue of IP. So it's
11 generally -- as opposed to some areas where you
12 have a real cobra-mongoose situation -- IP has not
13 been, thankfully, that. I think whoever --
14 Berman, I guess, is going to end up having a lot
15 to do with the House these days -- Berman's been a
16 good supporter right along, and been close to the
17 Rs. So that's the good news coming out of Tuesday
18 for people who worry about IP.

19 UNDER SECRETARY DUDAS: And, just adding
20 to that a little bit: I would say that it is
21 absolutely bi-partisan. Where you see the fight
22 is usually the middle versus the edge. It's the

1 exact same thing as the trade fight. So you see a
2 coalition of people who are more conservative
3 linking up with people who are more liberal,
4 versus the people who are more centric, who
5 support trade and also support a lot of these IP.
6 So it becomes an issue of whether or not we're
7 supporting the U.S. or not. And, again, I think
8 Dean alluded to it a little bit: some of the
9 Members of Congress who have been leaning more
10 toward more changes in the patent law, they're on
11 the Judiciary Committee in the House -- I mean,
12 compared to the general public they're largely
13 supportive of IP, and in a bi-partisan fashion.

14 CHAIRMAN RIVETTE: Okay -- Dean and Carl?
15 We haven't heard from you guys in a couple
16 minutes. You still there?

17 MR. KAMEN: I'm here.

18 CHAIRMAN RIVETTE: Okay. Just checking.

19 MR. KAMEN: I would make a couple of
20 comments again, just to show examples again of the
21 tendency of this whole group. Because, again, you
22 all have such deep, specific experience as

1 lawyers, as people in the lead. Somebody observed
2 there should be a debate: who is our customer.
3 You know, is it the lawyers -- the patent lawyers,
4 the prosecutors? Or business or the public? And
5 I think even the fact that we can possibly
6 entertain the idea that our customers -- not maybe
7 one of our constituents -- is the lawyers is
8 ridiculous. In fact, I'd argue that in many cases
9 the prosecutors that comment on these rule changes
10 and all these details are not only not the best
11 people to be persuasive about the big picture, but
12 they're conflicted. I mean, to be brutally
13 honest, we all know that the lawyers would love
14 the idea that this is so complex and arcane that
15 you can go to all -- as you pointed out -- you go
16 across the country and you have these open forums,
17 but there's a lot of lawyers out there that would
18 love to make sure that every person in the public
19 thinks it's impossible to navigate through the
20 patent system without first calling them. They
21 don't want this to be simple, straightforward and
22 transparent -- even for the little guy with a

1 simple patent. So we can't be focusing or
2 addressing our questions to who we're trying to
3 persuade, just the lawyers. First of all, the
4 public doesn't trust them very much. We don't
5 trust the accountants any more after all those
6 scandals. Everybody thinks they gamed the system.
7 So we need to bring this whole debate way higher,
8 and assume that it is the CEOs. And the comments
9 a few minutes ago by somebody was: well, but the
10 CEOs don't show up. Well, shame on us! The
11 reason the CEOs don't show up is because, again,
12 we're so much in the weeds that you cant' help
13 speaking in the shorthand of the language of
14 patent law. It's like, you know, in other
15 government agencies -- you know, when Bernanke
16 speaks, or even before, even when Greenspan spoke,
17 they may be unintelligible in some ways about what
18 they're trying to make obscure, but they don't
19 speak in the language of accountants and GAP
20 rules. They deliberately work hard at dealing
21 with issues that will engage the CEOs and the
22 big-picture people. And they don't talk about

1 whether their internal people have enough
2 resources. And you don't hear the guys that run
3 the Federal Reserve Bank worry about whether the
4 number of bonds being printed, or coins being
5 stamped is efficiently or inefficient. They keep
6 all of their rule issues sort of inside. But they
7 work hard at talking to the big picture -- to the
8 public, to the CEO's, to the political leaders --
9 in a way that makes this important to everybody at
10 a big-picture level. And we, I think -- even by
11 the nature of your suggesting that we ask for
12 comments from, and give comments to, and work with
13 people that have a very specific knowledge -- are
14 our worst enemy. And to me, it's -- and, Jon, I'm
15 glad that you think that the politicians are all
16 sort of on our side in this, but I spent two weeks
17 ago -- and maybe people were sort of preoccupied
18 -- a whole day going literally high bodies through
19 the Capitol building, and I probably talked to at
20 least a dozen Senators and probably 20 Congressmen
21 on other issues, but I never, never give up the
22 opportunity to ask: "So what do you think of this

1 property reform stuff?" "What do you think of
2 intellectual property issues?" And almost to a
3 person, they don't think it's significant; or they
4 think it is about details and issues and rules
5 that they're staff are going to handle. It's not
6 a policy issue to these people. And I was finally
7 saying to some of these Congress people: "Well,
8 you are involved in intellectual property issues.
9 You know, like -- money is an intellectual
10 property." That dollar bill doesn't run your car
11 or buy that chicken. We don't do business by
12 trading goats for eggs any more. And money itself
13 -- dollar bills -- are intellectual property.
14 It's an abstraction. And if you found that the
15 Treasury Department just couldn't keep up with
16 printing this stuff, or when you started issues
17 your government bonds, people started reading the
18 small print and it didn't say that it would pay
19 the bearer on demand, our society would collapse.
20 And you are now living in a country that can't
21 keep up with protecting people's intellectual
22 property, or allowing them to grow their business

1 because we just can't issue enough bonds, or
2 enough dollar bills or enough notes. And that's a
3 big issue. And you people have to get involved.
4 The intellectual property issues this country
5 faces aren't in the details of the rulemaking.
6 And I can tell you more chillingly that some of
7 them, when you push them, respond -- and maybe
8 they're being defensive because they don't know a
9 lot of details -- by telling you that they think
10 the debate that's at their level about
11 intellectual property isn't about the rules. They
12 literally -- and I could give you some names of
13 some of these people -- think the debate has now
14 been polarized, or they don't realize they've
15 polarized it enough, and maybe it's lobbying
16 that's worked against them. But when you listen
17 to them speak, they're really sort of deciding:
18 "Am I for or against strong intellectual
19 property." "Are patents a good idea or not?" You
20 know, "They get in the way of business; they're
21 expensive; they're being used as weapons." These
22 people have now been polarized enough that they're

1 not talking about how to take issues of while
2 there's bad intellectual policy, let's replace it
3 with good intellectual policy. They're choosing
4 between: do we want a strong patent system, or do
5 we want to get rid of it, or weaken it, or put it
6 away. And the idea that we should replace bad
7 intellectual property policy with no intellectual
8 property is pretty chilling, and not in those
9 small group on the Judiciary that you talk about,
10 where some of them are reasonably educated on this
11 issue -- and even whether they're right or they're
12 wrong, at least they've thought about it. But the
13 broader base of the Congress people and the people
14 in the Senate that you talk to are not very well
15 education, don't really care about it -- just as
16 we heard that the CEOs aren't well-educated and
17 don't care about it. Because we don't have the
18 Ben Bernanke or the Greenspan out there talking at
19 a high level to the whole country and the whole
20 leadership about how important this issue is. We
21 have their staffers talking to other staffers
22 about the nitty-gritty internal stuff. And shame

1 on us for letting that happen.

2 MR. GULBRANDSEN: This is Carl. I think
3 that the whole patent reform program or push has
4 actually been detrimental to the republic's view
5 of the Patent Office.

6 MR. KAMEN: I agree.

7 MR. GULBRANDSEN: All they've been
8 talking about is that there are bad patents out
9 there. And none of the (off mike) reforms really
10 are going to help the Patent Office; in fact, to
11 some extent, they exacerbate the problems. And,
12 to some extent, we need to get -- well, I think to
13 a great extent -- we need to get both the public
14 and the Congress to understand what a great Patent
15 Office we have, and let's figure out some way to
16 really help the Patent Office, and not just
17 destroy the patent system to get some, what other
18 people feel, is bad patents taken care of.

19 MR. KAMEN: That should be a major focus
20 of this group.

21 CHAIRMAN RIVETTE: As I said, Dean:
22 "communications" is written in bold marker on my

1 notebook for you. Okay -- any other questions,
2 concerns?

3 MS. NORTON: I have a comment. I think
4 that I agree that I really is completely
5 controlled by attorneys -- the patent system.
6 Even within huge law firms, everyone is
7 intimidated by the patent attorneys -- because
8 they're dealing with technology -- let alone
9 Members of Congress. Because there's probably a
10 handful in the House and Senate that really focus
11 on these issues. And so I think the practicality
12 is: you're going to be dealing with lawyers. They
13 have knee- jerk reactions to everything that
14 happens. You know, they think of the worst
15 possible situation. Every statement you make in
16 the Patent Office is going to impact not only that
17 application and that patent, but everything that's
18 related to it. And so they're looking at how the
19 case law is impacting everything that happens in
20 the Patent Office. So one approach we might want
21 to take is actually doing a combination of a
22 rule-change with a law that goes with it, and

1 actually put those both in a package at the Patent
2 Office. Because I think if you don't, maybe
3 things will change if the rules change and
4 everyone's all of a sudden making comments on the
5 scope of their patents within an IBS or something
6 else that actually examiner -- which is, I think,
7 a good idea on its own. The problem is how that
8 impacts everything else. I don't think the
9 attorneys are ever going to go for that. But if
10 you maybe combine them together -- pass
11 legislation together with the rule change, then
12 they'll have some degree of comfort that rit's
13 going to be okay. And I think that unfortunately
14 -- you know, certainly as much outreach as we can
15 do to CEOs and actual business people who are
16 making a business decision on what IP is
17 important, what should happen on a strategic level
18 -- is a great idea. But I think the system we
19 have now, we're going to have to work somehow with
20 the attorneys that are really -- and the staffers
21 at the Patent Office -- that are really making the
22 day-to-day choices, and make everybody comfortable

1 with those rule changes as they're going forth.
2 Because there's a knee-jerk reaction. Even though
3 these ideas I think are great ideas to help the
4 examiners know what to do, because of what that
5 does to your patent and your patent application,
6 the attorneys are going to do everything they can
7 to stop that. And I think there's going to be a
8 lot of time spent fighting, where maybe you could
9 go forward.

10 CHAIRMAN RIVETTE: Let me make one quick
11 -- one, I agree completely with you. Two, let's
12 do something -- you know, we've got patent experts
13 here, and we've got civilians. And one of the
14 things that I'd like to do from here on out at
15 these meetings, and on the phone, is: let's not
16 use the acronyms. Lisa, it's not you.
17 Everybody's --

18 MS. NORTON: Sure. I don't even realize
19 I'm doing it.

20 CHAIRMAN RIVETTE: Let's take it from
21 Dean's perspective. The only way we're going to
22 get out of this "We're the priests, and the

1 priests talk to the priests, and we all have
2 secret decoder rings, and it's really cool," is we
3 step up. So -- an IDS -- what is an IDS? We're
4 going to have to go through a little bit more:
5 what is this stuff? Because at the end of the
6 day, I think Dean's got a great, which is: we
7 should be able to make a two or three-page
8 statement at the end of each of these sessions
9 that's in English on what we just did, and where
10 we're going with this thing. And I think if we
11 force this group through that practice -- and it's
12 going to be tough -- then I think we'll have made
13 some progress.

14 UNDER SECRETARY DUDAS: Never done that in
15 my life -- one second. Just getting back to
16 Dean's point, and then even the way we've followed
17 up -- I think part of the big-picture point here
18 is: we have to be able to talk in big terms; and I
19 would even say continuations and claims rules
20 packages aren't the big terms. And so what Dean
21 had said, he's exactly right about the following
22 thing -- not to say we don't need to talk about

1 those things -- the message that's out there right
2 now is, for many people: patents are bad. It's
3 that simple. Patents are bad. And during the
4 AIPA, when that was said, "Patents are
5 un-American," I said, "Well, you know,
6 technically, after the Second Office Action,
7 within four months, you have an opportunity -- "
8 -- and that's when I heard "too f-ing
9 complicated." And we have to battle that. And
10 we'll be fiddling on the decks of the Titanic, or
11 whatever -- I screw up a lot of analogies -- but
12 we have to address that. And PPAC has to address
13 that. And we can't sit and argue about tiny
14 things when, truly, if people hadn't looked just a
15 little more closely, injunctive relief in the U.S.
16 system was almost gone in a way.

17 CHAIRMAN RIVETTE: Okay -- so let's --

18 UNDER SECRETARY DUDAS: That wasn't one
19 second.

20 CHAIRMAN RIVETTE: Close -- you got close.
21 So, from here on out, anybody who doesn't
22 understand an acronym just state it, and we will

1 go back over it. Because the acronyms have got to
2 leave. This has got to be so everybody
3 understands it at a very elemental level. With
4 that, I'd like to close this session. Give us
5 about 15 minutes to make phone calls and do
6 whatever we need to do and then get back together.
7 That sound about right? Okay.

8 (Recess)

9 CHAIRMAN RIVETTE: Back on the record.

10 OBJECTIVES AND ORGANIZATION OF PPAC

11 CHAIRMAN RIVETTE: Objectives and
12 organization of PPAC -- I don't know if this is
13 going to take the 45 minutes or not, but I really
14 think that we should think about and decide how
15 we're going to organize ourselves. I think we've
16 got to do what I said this morning which is: who
17 wants to sign up for what, and what topics are
18 interesting to you? So two things I'd like to do
19 in this period. Number one, I'd like everybody to
20 get our their calendars and, Andrea, let's go
21 figure out what we're going to do.

22 COMMISSIONER DOLL: Well, what we did is

1 we made a copy of the government calendar that has
2 all the legal holidays on it. And that might
3 help, because we had a problem with some of the
4 meetings because of government holidays. This
5 also has, on the left, the end of our quarters.
6 And that's how we do our reporting. We summarize
7 all of our data at the end of each one of the
8 quarters. So that might be a good time to send
9 the information out to you, so we might schedule a
10 meeting shortly after that.

11 CHAIRMAN RIVETTE: Exactly. So let's talk
12 about -- is everybody on the phone? Dean and
13 Carl?

14 MR. GULBRANDSEN: Yep, we're here?

15 MR. KAMEN: Sad, but true.

16 CHAIRMAN RIVETTE: That's okay -- we
17 expect to see you here in person next time.

18 MS. RYAN: Now, what are the squares?

19 COMMISSIONER DOLL: The squares are the
20 most important thing, because those are paydays.

21

22 MS. RYAN: Oh -- okay. So today's a

1 payday.

2 COMMISSIONER DOLL: Today's payday, so I'm
3 smiling.

4 MS. RYAN: And the circles are holidays.

5 COMMISSIONER DOLL: The circles are legal
6 holidays.

7 MR. MOSSINGHOFF: Are those paydays locked
8 in, John, or could we --

9 COMMISSIONER DOLL: I'd like to move them
10 closer together.

11 CHAIRMAN RIVETTE: So when do we think we
12 should be meeting? And why? And I'm just going
13 to just open it up. Max, you had the great --

14 MR. GRANT: My view is that we should be
15 meeting at a time sufficiently in advance of what
16 the key decision points are for the Patent Office.
17 And I don't know what those are. But I would
18 estimate there's a couple. Clearly, the budget
19 input that the PTO provides to OMB -- that's one
20 of it's major milestones for the year. So that
21 should be a fixture. And backing off that,
22 whatever the appropriate time. I'm not suggesting

1 that we get in the weeds and figure out whether
2 you should be spending 6 percent on this, and 7
3 percent on this. But to the extent that we're
4 able to provide guidance that helps your input to
5 OMB, that to me seems like one milestone that
6 should be fixed. I presume that there's another
7 fixed milestone -- at least from my experience at
8 DoD -- which is at some point --

9 MS. RYAN: What's "DoD?"

10 CHAIRMAN RIVETTE: Good point.

11 MR. GRANT: "PPAC" and "DoD" I thought I
12 was okay with.

13 CHAIRMAN RIVETTE: Nope.

14 MR. GRANT: I spent a little bit of time
15 at the Defense Department working on budgeting and
16 policy issues. And separate from the budget,
17 there was a major policy document that drove
18 subsequent, later in the year, the budgetary
19 priorities, etcetera. And that was something
20 that, again, was vetted up all the way through the
21 Secretary, and then from the Secretary, at some
22 staff level, got White House sign-off. And that

1 drove what the Department's priorities were. So
2 that, to me, seems like another major input point.

3 CHAIRMAN RIVETTE: So you say we've got
4 two key things we've got to look at: budget and
5 strategic policy.

6 MR. GRANT: Right.

7 CHAIRMAN RIVETTE: And anchor the first
8 two around those.

9 MR. GRANT: That's what I believe.

10 CHAIRMAN RIVETTE: Any other comments
11 about when we should be having these meetings?

12 (No response)

13 CHAIRMAN RIVETTE: Are there any dates for
14 anybody -- or not dates, but any periods of time
15 -- like I will tell you that I usually take August
16 off.

17 MR. GRANT: Now I'm jealous. I just
18 e-mailed you my resume.

19 CHAIRMAN RIVETTE: So that's normally what
20 I do, is I take that period off.

21 MS. RYAN: John, do you have guidance? I
22 mean --

1 CHAIRMAN RIVETTE: When would you like to
2 do it?

3 MS. RYAN: I was used to a cycle, only
4 because I've done this -- this is my third cycle,
5 but that was probably something, I don't whether
6 you had input into it, or why we met in -- as I
7 was scribbling my notes, I think we met in
8 October, April, August -- and I could remember the
9 fourth time. Was it March, February -- or -- I
10 don't know why that was done.

11 COMMISSIONER DOLL: Those dates were
12 actually set before -- I've only been here a
13 little over a year.

14 MS. RYAN: Yes, and they were set before.

15 COMMISSIONER DOLL: So I don't really
16 know. But one of the things that I did do, I'm
17 having Cathy get the dates when the OMB
18 submissions are do. So we're going to get with
19 the CFO -- maybe Barry can come in and give us
20 those dates, and that would set a timeframe for
21 one of those.

22 MS. RYAN: When I was in my first year,

1 people explained the budget cycle and it was a
2 blur. But I get the sense that that was sometime
3 in the summer; that we need a meeting --

4 COMMISSIONER DOLL: If you're going to
5 have actual input.

6 MS. RYAN: Yes. And then after that --

7 COMMISSIONER DOLL: Right.

8 MR. PATTON: Would it be too complex to
9 have everyone, give them a deadline of maybe a few
10 days, and say talk with your significant other,
11 work, or whatever, and say, "These are the
12 blackout days." And then you guys go ahead and
13 decide whatever days you want to do it. For me,
14 at least if it's three months in advance, or two
15 months, that's never a problem. And if we all
16 give you our blackout dates that says: okay, the
17 week of February 26th it's impossible for me.

18 CHAIRMAN RIVETTE: So why don't we do
19 this: why don't we come up with a pro forma -- you
20 know, kind of the approximate dates today. And
21 then everybody can go back and tell us why it
22 doesn't work.

1 MS. RYAN: I mean, I think it would be --
2 not just from the personal convenience, but from
3 what we've been talking about making sense -- if
4 the Patent Office thinks meeting in one month is
5 better than another, I think we should try to work
6 around that. But you're saying right now nobody
7 really knows why we meet when we meet.

8 CHAIRMAN RIVETTE: Barry?

9 MR. HUDSON: Yes.

10 CHAIRMAN RIVETTE: Kevin Rivette. Have a
11 seat.

12 MR. HUDSON: Good to meet you. Thank you.

13 MR. KAMEN: This might be a heretical
14 statement --

15 CHAIRMAN RIVETTE: And this will be your
16 first?

17 MR. KAMEN: Yeah.

18 CHAIRMAN RIVETTE: Good. Good. First
19 since the break.

20 MR. KAMEN: Since a lot of you -- and
21 certainly I -- have day jobs, and I know some
22 people protect their weekends fanatically, and

1 that's fine -- but is there any chance that
2 anybody would find starting it on a Friday and
3 then do it Saturday? Or coming in Sunday and
4 doing Monday? Weekends, to me -- you know, I work
5 seven days a week. As long as I'm awake, I'm
6 working. But I have less interruptions and less
7 business issues if it's a night or a weekend for
8 something than during a typical business day when
9 the rest of the world wants you. Anybody got any
10 appetite for using any of those "other" times? I
11 think the "heretical" statement was the correct
12 one.

13 MR. KAMEN: Okay. I'm flexible.

14 CHAIRMAN RIVETTE: No, that's okay.

15 MR. KAMEN: I am. I'll try to be in
16 Washington. But I would agree with some of the
17 other people that, I guess, if we could tie it to
18 events that are going on that give us more
19 efficiency for going places, doing things,
20 consistent with what else might be timely at the
21 Patent Office or elsewhere. And as, I think,
22 Kevin pointed out in the beginning: if interesting

1 speakers were available or brought it, by which
2 there's as much new learning going on, that also
3 makes it more attractive. So I guess I'll be
4 flexible and do what everybody wants. If we could
5 schedule the dates, though, and try to stick with
6 them -- because I know a lot of our earlier
7 meetings kept moving kind of regularly.

8 CHAIRMAN RIVETTE: Yes, I know -- the
9 airplane reservations were fun.

10 MR. WESTERGARD: I have a general
11 preference for a Monday or a Friday.

12 MR. KAMEN: I would agree with that.

13 MR. WESTERGARD: Just because middle of
14 the week is just really hard to get away from work
15 for the whole time. So, for me, coming from
16 Boise, it will take -- I flew out yesterday and I
17 have to fly out tomorrow, so it's three days
18 impacted. Where, if one of those was a weekend
19 day -- not for the meeting, but for travel, then
20 that would help me out a little bit.

21 CHAIRMAN RIVETTE: Well, maybe then
22 Fridays -- because I will tell you that I make a

1 huge effort to be home on the weekends; I mean,
2 just a huge effort. And with the amount of
3 traveling I do, it's how family life works better.
4 So even Friday -- and then there's another
5 approach: maybe we hold this thing and we start at
6 7:30 or something, and we get out of here so we
7 catch six o'clock flights. And that would work
8 for me on a Friday. I'll get back late, but
9 that's okay. Dean, does that feel better to you?

10 MR. KAMEN: At least like a very good
11 compromise.

12 MR. GRANT: I don't think any of us
13 probably have a problem meeting on the weekends,
14 but we have to be cognizant of the fact that
15 there's a lot of PTO staff that are involved in
16 the meetings and so on, and that would impact
17 their schedules -- not just of the senior people.

18 MR. KAMEN: I think Friday/Monday is
19 certainly a step in the right direction.

20 CHAIRMAN RIVETTE: Well, I'm thinking
21 Friday, because then I can catch the flight out on
22 Thursday and get back on Friday, instead of going

1 out Sunday. So -- okay, let's make it Friday.

2 UNDER SECRETARY DUDAS: So, Dean, are you
3 saying Friday through Monday?

4 COMMISSIONER DOLL: Well, we could always
5 rotate, too. We could fly out to Boise and have
6 the first meeting there, and then fly out to
7 Irvine and have a meeting there --

8 MR. BUDENS: We just need to make sure
9 that PTO's planning on paying those travel --

10 CHAIRMAN RIVETTE: That's what we just
11 talked about. Okay, so at this point why don't
12 we pick four Fridays. Commissioner, what days
13 would you suggest. Your cycle -- where would you
14 want us?

15 COMMISSIONER DOLL: Where we should
16 probably start -- and that's why I asked Barry to
17 come in. For those of you who haven't met him,
18 this is Barry Hudson, our CFO. And we had talked
19 about having one of the meetings around the budget
20 submission. So I wanted Barry to talk about the
21 dates when the budget had to be submitted; when,
22 in the past, we've rolled the information out to

1 PPAC; and when would give you enough time to
2 understand and give us feedback. And that's what
3 I'd asked Barry to stop in for. So I really
4 appreciate -- I'm glad we found you. You're
5 usually running around trying to get things done.

6 CHAIRMAN RIVETTE: And this says he's not?

7 MR. HUDSON: The budget process basically
8 is as follows: we start internally, for everybody
9 here -- for example, let's talk about the '09
10 budget cycle, since the '08's pretty much beyond.
11 We begin our process internally around the spring
12 time from; so about March -- early March -- is
13 when we start doing our collective thinking as to
14 what our needs are for the upcoming year. So
15 that's an internal process. We are then required
16 to submit to OMB in September -- early September.
17 So that's obviously -- before we submit to OMB --
18 that's when PPAC would actually want to be able to
19 weigh in and have input. So, sometime between
20 March and September, August, timeframe may be a
21 very good point.

22 MS. RYAN: July is lovely.

1 CHAIRMAN RIVETTE: When do you provide
2 your first input to Jon and John?

3 MR. HUDSON: May. We take a good two
4 months to wrap it up.

5 MS. RYAN: We've had April meetings -- at
6 least in my enure, we've had April meetings. And
7 I think it was -- at least my understanding was
8 the meetings were set to try to cycle into the
9 budget. So there's been April meetings.

10 COMMISSIONER DOLL: We could do early May
11 -- May 4th is a Friday, and that would give Barry
12 plenty of time to have a budget model out there
13 that we could comment on.

14 MR. GRANT: But what would be helpful to
15 you all?

16 UNDER SECRETARY DUDAS: Right -- back in.
17 Yes.

18 MR. GRANT: He gets a budget. He submits
19 it to you. I presume you look at it and try to
20 determine whether the priorities as reflected in
21 the financial allocations comport with policy and
22 your priorities. Then I presume feedback,

1 push-back -- whatever -- reallocation. It seems
2 to me that our input, instead of telling you what
3 it should be, should be advising you on your
4 initial thoughts of what the priorities are and
5 whether they make sense, etcetera. So I would
6 say, rather than providing input before you've
7 seen anything, it seems to me that what we're
8 talking about is really talking with you about the
9 priorities that you see, and trying to provide
10 advice on that. Does that make sense? So maybe
11 we're talking about, instead of April/May, maybe
12 we're talking about June?

13 CHAIRMAN RIVETTE: Early June?

14 UNDER SECRETARY DUDAS: Does that give us
15 enough time to use the input?

16 MR. HUDSON: Yes -- I mean, even at that
17 point in time, depending on our revenue models and
18 projections, they always could be an impact. If
19 we say we're projecting, as of the May time
20 frames, x terms and fee collections, and all of a
21 sudden we went and modeled -- a couple months
22 later it could change slightly. And there's

1 always going back and saying, "Okay, what are the
2 priorities." So if we do it right up front and
3 say, "Here's our priorities," you can draw a line
4 saying here's our revenue projection at this
5 point, we'd actually know that if it drops or
6 increases, we know what we can add and subtract.

7 UNDER SECRETARY DUDAS: And I will also
8 note that it's important that we get in on this
9 budget cycle. But some of the big things we're
10 going to be asking for -- big idea: double the
11 salaries of examiners, which means statutory
12 language. That's such a long-term -- I mean,
13 people have raised that issue -- I use that by way
14 of example, not offering -- using the term
15 loosely. That's the kind of thing that almost
16 could happen at any time. So this is really --

17 CHAIRMAN RIVETTE: No, no -- part of our
18 charter is budget. So we should probably take at
19 least one working session on the budget. And I
20 think late May/early June feels right, because
21 then we've got enough time that we'll be in the
22 cycle. And if we need to have a follow-on

1 con-call or something like that we can do it,
2 having all met. Gerry, does that feel right to
3 you?

4 MR. MOSSINGHOFF: Mm-hmm.

5 CHAIRMAN RIVETTE: Okay -- so who wants to
6 be the one to stick their hand up in the air and
7 say June what?

8 COMMISSIONER DOLL: If we get our
9 quarters, we could go February 16th, we could go
10 May 25th, we could go August 31st -- because those
11 are spaced three months apart; and then do
12 November 30th. Those are Fridays, and they fall
13 in the middle of a quarter.

14 CHAIRMAN RIVETTE: Which ones are you
15 talking about?

16 COMMISSIONER DOLL: Well, we're here today
17 on November 9th. So if you drop down to February
18 18th, that's a Friday. And what I was trying to
19 do was get to a late-May Friday.

20 MS. RYAN: February 16th.

21 COMMISSIONER DOLL: 16th yes. Got it.
22 And then May 25th, which is late May.

1 UNDER SECRETARY DUDAS: Is that right
2 before Labor Day?

3 CHAIRMAN RIVETTE: Why don't we go early
4 June. We don't have to have it --

5 MS. RYAN: You were talking about
6 "blackout periods." It would be much better for
7 me if we were meeting mid-March rather than
8 February. Would that push everything?

9 MR. GRANT: That's okay. I'm not sure
10 whether this is right or wrong, but I guess my
11 thought is: let's figure out what the right is for
12 the budget. Let's figure out what the right day
13 is on the policy sort of strategic input, and then
14 let's figure out -- with you -- what other two
15 dates are useful. It doesn't have to be, I think,
16 sort of a periodic once-a-quarter thing, unless
17 that's what makes sense.

18 COMMISSIONER DOLL: I'm not sure the
19 budget is driving this as much as the strategic
20 plan. Because we get a certain amount of money
21 based on projected income. And months before that
22 we build a strategic plan, and then we allocate

1 money according to what our priorities are.

2 CHAIRMAN RIVETTE: So what I'm hearing is
3 two things: one, we need to be involved months
4 before that in the strategic plan.

5 COMMISSIONER DOLL: Yes.

6 CHAIRMAN RIVETTE: And then, two, we
7 should -- by charter -- I think we should have a
8 day session to it on the budget itself, so that we
9 look at the strategic plan, and then how it then
10 fits into the budget.

11 MR. GRANT: Right -- those are the two
12 that I was talking about that I think we need to
13 fix, and then let's figure out where the other two
14 make sense consistent with your --

15 CHAIRMAN RIVETTE: So when do you start
16 the cyclic -- you know, the strategic plan part of
17 this thing, so that Barry's got enough input that
18 he can say, "Here are my priorities?"

19 UNDER SECRETARY DUDAS: When do we input
20 for when we're updating the strategic plan for
21 (off mike)?

22 MR. HUDSON: The input for?

1 UNDER SECRETARY DUDAS: For adjusting
2 strategic plan for ONI, if we're on the right
3 timeframe?

4 MR. HUDSON: January? I mean, there's no
5 "right" timeline, other than us saying are we
6 looking at it on a proactive basis -- or from an
7 execution standpoint, which we talked about,
8 having a better process going forward. And then
9 when do we actually say, "Let's take a look at, on
10 an annual basis, what are other ideas that we have
11 come up with in this time. So it can be done any
12 time.

13 UNDER SECRETARY DUDAS: Yes, but we are
14 saying that our budgets get done so early that, in
15 order to give us time to tactically carry out the
16 strategic plan item, we're talking about like more
17 than a year in advance on the strategic plan item
18 -- which we have not traditionally --

19 MR. HUDSON: Let's talk about '09 -- okay?
20 The March timeframe is when we're going to be
21 thinking about the '09 budget. And we already
22 have a plan that we have to make sure that those

1 things are incorporated and integrated. So that
2 would be the first timeframe when all that should
3 come together.

4 UNDER SECRETARY DUDAS: So on the right
5 path, putting things in the right order, would be
6 January, February at the latest -- literally -- to
7 affect the '09 strategic plan. Or -- I won't call
8 it an "'09 strategic plan" -- adjusting the
9 strategic plan -- but, as you know, the strategic
10 plan we have now will require adjustment, because
11 we're kind of open to ideas. That's the policy
12 document.

13 MR. HUDSON: So I wouldn't object to
14 actually having those done simultaneously, at the
15 same time we're doing the '09 budget, we have that
16 strategic plan session to say -- you know, instead
17 of January, you could do it in March, or early
18 April.

19 UNDER SECRETARY DUDAS: But isn't your
20 march budget going to reflect -- I guess, again,
21 if we say we're looking --

22 MR. HUDSON: But the March timeframe is

1 when we're just floating ideas. Nothing's final
2 until like the June --

3 UNDER SECRETARY DUDAS: It sounds like in
4 an ideal world you'd have a January --

5 MR. GRANT: I think the policy input is
6 something like January. And then the sort of
7 involvement in the initial budget is, you know:
8 okay these were our policy preferences, now let's
9 see how they were being carried out, and advise on
10 that. So it looks to me like something like
11 initially January and June.

12 UNDER SECRETARY DUDAS: January '07 is the
13 time to really get discussing the '09 strategic
14 changes. Ironically, I won't be here. It's only
15 two months.

16 CHAIRMAN RIVETTE: Okay, so do you want to
17 say -- this is '07. If we're just fixing rough
18 dates now, we're fixing something that looks like
19 the middle of January, and we're fixing something
20 that looks like early June. What are the other
21 two places in the year when you guys are doing
22 things where advice would be helpful?

1 UNDER SECRETARY DUDAS: Those are the two
2 key times. And it's certainly more useful to talk
3 once ever three months than it is once, then two
4 weeks later, then wait six months. Today I think
5 we try to balance it out more quarterly, or
6 something like that.

7 COMMISSIONER DOLL: Those are also the
8 times when we set our goals for the following
9 years -- we had talked about it earlier -- where
10 we set projected pendency to be; where we're going
11 to set production; where we're going to set hires.
12 And that drives the budget, also.

13 CHAIRMAN RIVETTE: So do we like October
14 or November better?

15 UNDER SECRETARY DUDAS: November Congress
16 is often out.

17 CHAIRMAN RIVETTE: Is that easier for you?

18 UNDER SECRETARY DUDAS: Yes, that's
19 easier.

20 CHAIRMAN RIVETTE: Okay.

21 UNDER SECRETARY DUDAS: But if there's a
22 reason for October --

1 CHAIRMAN RIVETTE: But I'm just saying
2 November -- and that would leave us sometime
3 between January and June. Anybody got any ideas?

4 (No response)

5 MR. WESTERGARD: Should we start focusing
6 on specific days? Like January 19th, and April
7 20th, and June 8th or 15th?

8 MS. RYAN: Well, you do end up with --
9 from January to June, that's a six-month span.
10 And that's what Jon was saying.

11 CHAIRMAN RIVETTE: We'll try to put
12 something in between.

13 MS. RYAN: Right -- in between. Like end
14 of April.

15 CHAIRMAN RIVETTE: Right -- and, you know,
16 what I'm thinking is mid- to late January thing;
17 an early June thing; sometime early to
18 mid-November; and then, like -- late April?

19 MR. MOSSINGHOFF: Kevin, you ought to keep
20 these rough until somebody checks the AIPLA and
21 the IPA --

22 CHAIRMAN RIVETTE: Yes, yes -- absolutely.

1 MR. MOSSINGHOFF: Because there's a lot of
2 meetings that people want to go to.

3 CHAIRMAN RIVETTE: That are more
4 important?

5 MR. GRANT: And there's spring break.
6 We've got to keep an eye on that -- at the end of
7 March.

8 COMMISSIONER DOLL: Do you still go every
9 year?

10 CHAIRMAN RIVETTE: He saw you on the
11 video. I didn't see the video.

12 MR. GRANT: I was pretty sure my face was
13 obscured.

14 CHAIRMAN RIVETTE: Why don't we do this:
15 John, why don't you and I work on getting some
16 dates.

17 COMMISSIONER DOLL: We can do that.

18 CHAIRMAN RIVETTE: For January, April,
19 June and November.

20 COMMISSIONER DOLL: Right.

21 CHAIRMAN RIVETTE: Does that work for
22 everybody? And then we'll send that out. I'd

1 like to have a return date on everything. So why
2 don't you and I work on it, and we send everything
3 out within, say, one week from today.

4 COMMISSIONER DOLL: We can do that. And
5 we'll bounce it off Barry and make sure it works
6 with the strategic planning and the budget.

7 MR. GRANT: And then you've got five
8 months between June and November.

9 CHAIRMAN RIVETTE: We'll all be sick of
10 each other.

11 UNDER SECRETARY DUDAS: We promise to
12 call.

13 CHAIRMAN RIVETTE: I guess my view is
14 we're going to be having con-call meetings for
15 updates in that period of time. This is not going
16 to be where we all get together and we just get a
17 dump of new data. So there's probably going to be
18 a six-week to monthly con-call. So you've got
19 issues coming up, you've got data that you want to
20 provide -- those are the sort of things that I
21 think we should be kept informed of so that when
22 we do get together we actually make real decisions

1 and come out with something. So -- let's you and
2 I plan on having this done by Thursday of next
3 week, and then we will send it out to everybody.
4 And we will, within a week from that, hopefully,
5 have it nailed down.

6 COMMISSIONER DOLL: Well, based on what
7 David said, I'm not sure we shouldn't try for
8 February-May. I mean, we'd have enough of the
9 budget done in late May. And that would be evenly
10 spaced, then, where it would be more quarterly if
11 we did February, May, and then do an August and a
12 November. That just equally spaces it through the
13 year.

14 UNDER SECRETARY DUDAS: August is not
15 good. You take August off.

16 CHAIRMAN RIVETTE: Oh, yes.

17 UNDER SECRETARY DUDAS: You could take us
18 with you.

19 CHAIRMAN RIVETTE: Next year is Italy.

20 VOICE: I'm available, Kevin.

21 UNDER SECRETARY DUDAS: Well, perhaps the
22 regional meeting idea.

1 MR. WESTERGARD: First Boise, then Milan.

2 COMMISSIONER DOLL: Is there wine
3 involved?

4 CHAIRMAN RIVETTE: Oh, yes.

5 COMMISSIONER DOLL: We'll make this happen
6 by next Thursday.

7 CHAIRMAN RIVETTE: So we've got about 10
8 minutes. What I'd like to do is go around the
9 table right now and, first of all, open it up with
10 some ideas I've had. It doesn't mean that these
11 are the right ideas. It doesn't mean these are
12 the right topics. I'll throw them out as pro
13 formas. Let's talk about it and see who wants to
14 work on what, so we can self-organize. I think
15 we've got some issues around this -- and tell me
16 I'm wrong, it's okay: retention, number one. I
17 think we've got a pendency/examination process,
18 number two. I've got a prior art issue -- call it
19 "quality" if you want. I'm not sure it's per se
20 quality, but I think there are some issues around
21 finding the best prior art, and how we do that.
22 And maybe we put it as full quality, and that

1 would also go to Lisa's issues, which is: maybe we
2 have to put in some of the legislation changes
3 that we want in that mix. And I agree with Lisa:
4 we just don't wave a wand on this one. We've got
5 to get some other things involved. So -- call it
6 "quality. I think we've got a communications
7 issue --

8 COMMISSIONER DOLL: Inside or outside?

9 CHAIRMAN RIVETTE: Both.

10 COMMISSIONER DOLL: I agree.

11 CHAIRMAN RIVETTE: I think we've got a
12 process issue on how do we determine what the
13 products would be; how do we get the data we need
14 to make the right decisions on some of the
15 trade-offs that are going to be required to look
16 at pendency and quality? Because we're going to
17 make trade- offs. And I thin that, Doug, we're
18 going to have to rely on you, and look at your
19 network and your understanding -- how to look at
20 some of the process on building new products, is
21 really what we're talking about.

22 MR. PATTON: And could you -- I know it's

1 not a mnemonic -- but "product," can we sometime
2 today define that a little bit more extensively?

3 COMMISSIONER DOLL: Absolutely.

4 UNDER SECRETARY DUDAS: Sure.

5 MS. RYAN: Could you just clarify? I
6 thought "number two" you had said "process."
7 Then I don't think I understand --

8 CHAIRMAN RIVETTE: Oh, examination
9 process?

10 MS. RYAN: Examination.

11 CHAIRMAN RIVETTE: Right.

12 MS. RYAN: So five is more product
13 process.

14 CHAIRMAN RIVETTE: Right -- it's more of
15 an outward thing. So I'm looking at process.
16 There's an inward --

17 MS. RYAN: Internal process. Okay.

18 CHAIRMAN RIVETTE: You know,
19 examination/pendency could be around some of the
20 metrics used, some of the goals. I think there's
21 actually -- what I would like to do, put it this
22 way: I'd like to do a day in the life of an

1 examiner. I'd like to walk through that. I think
2 there actually may be a PR or communications thing
3 that we can run some of the Senators through. I'm
4 not sure that we're not missing a big deal here.
5 The CIA does it with all its cool things. I think
6 we can do it with a different spin on it, and
7 start getting people up to speed without having to
8 beat them over the head with it.

9 COMMISSIONER DOLL: That's interesting,
10 because we've done that in the past for PPAC,
11 where we've actually brought an examiner in, and
12 he talks about an application; shows you the tools
13 that they use; how they use them; how they search;
14 how they write office actions. And that's always
15 really been educational for PPAC members to know
16 exactly what an examiner does. Because a lot of
17 you don't prosecute, a lot of you don't interview
18 examiners. And some of you weren't examiners.

19 CHAIRMAN RIVETTE: I think it's better
20 that we actually take them to different rooms, and
21 walk them through the process.

22 COMMISSIONER DOLL: That would be great.

1 See an examiner.

2 CHAIRMAN RIVETTE: See it.

3 COMMISSIONER DOLL: And since your
4 government employees, you could examine one when
5 you're there.

6 CHAIRMAN RIVETTE: This is the pendency
7 problem. I'm working on the backlog. The
8 retention's going to be the issue. Rule changes:
9 I think we've got to look at that, and help with
10 that. And I think there's an issue around budget.
11 So those are mine. Does anybody have any other
12 ideas? What have I forgotten? Where did I get
13 stupid?

14 UNDER SECRETARY DUDAS: Director's salary.

15 CHAIRMAN RIVETTE: Okay.

16 MS. RYAN: That's retention, Jon.

17 MR. WESTERGARD: Kevin?

18 CHAIRMAN RIVETTE: Yes, yes.

19 MR. WESTERGARD: The one fact that I have
20 is that the Patent Office, of all of the
21 governmental institutions or voices that weigh in
22 on patent reform ought to be one of the weightiest

1 and heaviest. And all of this reform, even though
2 some of it relates to litigation reform, and a lot
3 of it relates to quality, the PTO's voice really
4 ought to be heard. Now, Jon has testified in
5 Congress on some of those hearings. But, so how
6 all of these objectives that you've laid out
7 overlap or interweave into a lot of the patent
8 reform discussion that's going on, because I fear
9 that if we don't weigh in early --

10 CHAIRMAN RIVETTE: We're going to miss it.

11 MR. WESTERGARD: -- we're going to miss
12 it.

13 CHAIRMAN RIVETTE: Yep -- I agree.

14 MR. WESTERGARD: A bill is going to go
15 through, and we've got to have -- like, for
16 example, one of the issues in the bill: it's going
17 to dramatically redefine what constitutes prior
18 art.

19 CHAIRMAN RIVETTE: Right.

20 MR. WESTERGARD: And that's an issue that
21 PTO ought to care a whole lot about, and we ought
22 to weigh in on it, and we ought to do it very

1 quickly. You know, some voices will tell you that
2 the patent reform on the Hill is going to take
3 another two years. Others will tell you that it
4 will happen early in this next session. But we
5 need to be informing the process with the voice of
6 the PPAC; make PPAC a player in the negotiations
7 back and forth between --

8 CHAIRMAN RIVETTE: Can we --

9 MS. RYAN: I was just going to say --

10 CHAIRMAN RIVETTE: That's my issue.

11 MS. RYAN: We're government employees,
12 aren't we?

13 CHAIRMAN RIVETTE: Yep. Yep. Can we?

14 MR. WESTERGARD: I mean, they have you
15 testify on the Hill specifically about patent
16 reform. Would they not -- I mean, in response to
17 an invitation by Berman, or Boucher -- whoever
18 takes charge there -- have a voice from PPAC? Or
19 is it simply we inform Jon of the views, and then
20 Jon goes and testifies?

21 UNDER SECRETARY DUDAS: I would think if
22 you didn't lobby, you could go in and make your

1 views known. It's an informational role you play,
2 not a lobbying role. And I would think that you
3 could do that. And certainly in formulating and
4 crafting an Administration policy or response to
5 critiques or whatever -- proposals.

6 MR. GRANT: I guess my view on that is: to
7 the extent anybody was going to effectively act as
8 a surrogate -- because that's essentially what you
9 would be doing -- you would really need to be
10 speaking, I think, on behalf of the Administration
11 and PTO policy.

12 MR. WESTERGARD: So maybe that's just Jon.

13 MR. GRANT: Yes -- I think to the extent
14 you're doing anything other than just being a
15 surrogate for that, then I think we're running
16 into those questions about whether we're outside
17 the scope of our role.

18 MS. NORTON: And I think also there may be
19 disagreement within the PPAC. And so, you know,
20 we can give all of our views to Jon, but then he
21 can go forward.

22 MR. WESTERGARD: That makes sense. I just

1 wanted to make sure that we're discussing those
2 issues in a timely way so that we can inform your
3 approach.

4 MR. PATTON: Kevin, I've got a question --
5 and it may be contained within these eight points
6 that you just --

7 CHAIRMAN RIVETTE: I'm not sure those are
8 the right eight. I'm just --

9 MR. PATTON: I just have a question; maybe
10 it's contained in here. One of the things that
11 I've thought a lot about, and I've got opinions
12 ready to throw out on the table -- like Henry
13 Samueli, at Broadcom, I've talked to. He has a
14 different view than a lot of venture start-up
15 companies, and they're opposing each other. Is
16 that contained in these points?

17 CHAIRMAN RIVETTE: No, it isn't. And it
18 might be something we should look at, because
19 Lisa's got the same issue around PharMA versus
20 high-tech. And there may be --

21 MS. NORTON: They're very divided.

22 CHAIRMAN RIVETTE: They're very divided.

1 So maybe I'm missing a category, which is: how do
2 we work out the divisions?

3 MS. NORTON: I think that's a great idea.

4 CHAIRMAN RIVETTE: Why don't we shelve
5 this 'til this afternoon, and we'll cut into some
6 other time. But we'll figure out who's going to
7 do what to whom, is really what I want to do. So
8 one of the things I'd like to do now is move over
9 to our lunch speaker, since he has shown up. We
10 could cut into the strategic plan initiative a
11 little bit, because we've got an hour- and-a-half
12 for that, Doug -- to kind of talk about: are those
13 the right eight things, and who wants to sign up
14 to which ones?

15 MR. PATTON: Okay.

16 CHAIRMAN RIVETTE: Because I think you hit
17 a nerve. I think there should be some work done
18 on that.

19 MR. PATTON: Okay. I was just curious.

20 CHAIRMAN RIVETTE: Let me just pencil it
21 in. Okay.

22 (Whereupon, a luncheon recess

1 was taken.)

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1 A F T E R N O O N S E S S I O N

2 CHAIRMAN RIVETTE: Back on the record.

3 Hopefully everybody enjoyed that. I know I did.

4 Hopefully we can do more of it. I would love some

5 ideas on other speakers that people think would be

6 appropriate so that we can talk to them. I'd like

7 to see if I can get heads of major corporations in

8 here. I'd like to see if we can get some

9 inventors in here. I'd like to get their

10 perspectives. I think Randy's comments were good.

11 I think there's some follow-up we can do to look

12 at some of the things that he was talking about as

13 potential ways to help quality. These are the

14 things I think we haven't turned over a lot of

15 rocks yet. And I think we're going to be in the

16 process of doing that for years to come. Let's

17 see -- we are in the annual report prep

18 discussion. I'm actually wondering, right now, if

19 we could take that and maybe make that a con-call,

20 because I'd like to get back to the organizational

21 issue pretty quickly, to kind of define our

22 organization and how we want to work. So does

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1 everybody feel okay with that? Can we take a
2 con-call in a week, say -- because we've got to do
3 this fairly quickly. My gut is it's going to be
4 pretty pro forma for this one, because it's a
5 November time frame, but I'd like to start looking
6 at how we're going to do this differently next
7 year. Does everybody feel comfortable with that?

8 MR. WESTERGARD: Works for me.

9 CHAIRMAN RIVETTE: Okay --
10 organizationally. I put out eight, Doug put out
11 another one. Any others at this point? You know,
12 any other categories of work that we need to get
13 done, or want to get done? I mean, everybody came
14 here with a purpose. Everybody's here because
15 they want to accomplish something. Why don't we
16 go around the table right now and say: what do you
17 want to accomplish? What do you want to work on?
18 Jon? No -- Dave, what do you want to work on?

19 MR. WESTERGARD: I get excited about the
20 policy issues.

21 CHAIRMAN RIVETTE: Okay.

22 MR. WESTERGARD: And so the policy issues;

1 the PTO rules packages and the like -- those are
2 the kinds of things that really get my interest.
3 So if I can help on that, I'd love to.

4 CHAIRMAN RIVETTE: Mr. Mossinghoff -- the
5 honorable.

6 MR. MOSSINGHOFF: I guess sort of all-of-
7 the-above. But if there's one area where I think
8 we have not been successful, that's at getting
9 some concrete goals on pendency, by year, by
10 quarter, by semi-whatevers. So I would want to
11 work on that. I think we need those. I don't
12 think you can run a can factory unless you know
13 how many cans you're going to produce and hold
14 somebody responsible for that.

15 CHAIRMAN RIVETTE: Okay. Lisa?

16 MS. NORTON: I'm very interested in policy
17 issues, as well; and the relationship between the
18 bio and IP, how to best address that and to be
19 fair to everyone if we can? And then also I think
20 the Patent Office is doing great things with
21 retention, and then also just the hoteling program
22 -- I think they're doing a lot of creative things,

1 trying to set up maybe other centers to take
2 advantage of people with training on the West
3 Coast -- that sort of thing -- would be very
4 interesting.

5 CHAIRMAN RIVETTE: So you'd like to work
6 on those?

7 MS. NORTON: Yes -- that would be great.

8 CHAIRMAN RIVETTE: Robert?

9 MR. BUDENS: Well, clearly, from an
10 examiners point of view we have an interest in all
11 of these --

12 CHAIRMAN RIVETTE: Well, remember, you
13 left that at the door, my friend.

14 MR. BUDENS: The issues that would
15 probably be most important to me would be the
16 retention and the examination process and prior
17 art legislative issues. Those are the issues that
18 we would have --

19 CHAIRMAN RIVETTE: Not "we," "you."

20 MR. BUDENS: -- to me -- as far as
21 information and ideas and stuff.

22 CHAIRMAN RIVETTE: Doug?

1 MR. PATTON: I'm unique in this case. I'm
2 interested, with my kind of diverse background
3 group, in what you think my best area of
4 contribution is. I know everyone that I've talked
5 to before I got to this point, it was always: how
6 do we maintain our international competitiveness;
7 how do we, from the top down, allow business to
8 move faster and better, compared to what's
9 happening in other nations? And the other aspect
10 that Im passionate about is: Judge Rader talked
11 about the classes in India, how all the students
12 are doing patents. And you can see all my
13 questions today have been centered around
14 inspiring invention. And I don't know whether
15 that is a part of this office, or a part of this
16 committee. But I do have a question: you had said
17 one thing I would be good with are products, and I
18 asked you define what are the "products."

19 CHAIRMAN RIVETTE: John, do you want to go
20 to that?

21 COMMISSIONER DOLL: What we're looking for
22 is to redefine what we do. What we do right now

1 is one-size-fits-all. Every application that gets
2 filed gets the same level of examination; gets the
3 same presumption of validity. Last year we had
4 420,000 applications filed. This year we're
5 expecting 475,000 applications filed. We simply
6 can't examine everything that comes in. We had
7 424,000 last year -- rough numbers. We did
8 305,000 new first actions. So we put over 110,000
9 applications into the backlog last year. What the
10 vision was is that if we could somehow craft
11 different levels of examination, where you would
12 actually have different products -- because the
13 vast majority of patents never get litigated;
14 they're never used offensively or defensively.
15 The vast majority, unfortunately, never make
16 money. So for that 95 percent that fall into that
17 category, they don't need that same level of
18 examination. And the ideas that we were throwing
19 around -- and, really, this is just an idea, and
20 that's why we were interested in the process --
21 how do we get out and ask the people what they
22 would like to have. We would like to know if

1 there wouldn't be different levels of product that
2 you could voluntarily elect -- and possibly come
3 back at a later time. Say you took the first
4 level, that didn't give you a full presumption of
5 validity. At some point in time, when you were
6 marketing, or you were getting sued, or you wanted
7 to sue somebody, or you were involved in a
8 different litigation, for validity possibly, you
9 might want to come back and up that level of
10 examination. And we had thought we would allow
11 you to do that. And at some point in time, the
12 regular examination -- it would always be an
13 option where, if that's what you wanted, you could
14 elect to have that option. We also talked about
15 maybe a much higher level of certainty; a much
16 higher level of examination -- rather than 20 --

17 CHAIRMAN RIVETTE: Doug -- I don't want to
18 stop you -- but do you have a good idea now?

19 MR. PATTON: Yes, I recall that. And you
20 had mentioned marketing would be something.

21 CHAIRMAN RIVETTE: When I've gone through
22 this process before -- and I have one of my old

1 VPs of marketing actually draft up some of the
2 things that they'd look at for a product
3 requirements document, a marketing survey. The
4 Office has never done this sort of thing before.
5 This is blocking and tackling 101, in my opinion.
6 But they haven't done it. So how do we help them
7 along that course?

8 MR. PATTON: Well, I already -- like I
9 say, I already have a lot of opinions I'm carrying
10 with me where I can -- you know, I think there's
11 an interest from a CEO level to talk -- at least
12 the ones I know -- if they know it's going to be
13 heard.

14 CHAIRMAN RIVETTE: Right. But I guess
15 what I'm saying is: I think there's also a need
16 for a process that we lay out: here's the
17 information we need to gather.

18 MR. PATTON: Right.

19 CHAIRMAN RIVETTE: I mean, what is a
20 product requirements document, almost -- which you
21 probably don't have.

22 COMMISSIONER DOLL: No -- because we don't

1 want to guide the process. We don't want to go
2 out and say: this is what we think we ought to do
3 to solve the claims problem, or the continuation
4 problem. We'd rather go out and let the CEOs, let
5 the stakeholders, let the people that really use
6 the system tell us what you would like to have,
7 and then we could craft products around their
8 desires, not what we think the solution is.

9 CHAIRMAN RIVETTE: But you have to frame
10 this properly, and there has to be a process by
11 how do you frame it, and then how do you actually
12 get those people to respond in a way that is
13 useful to give you data that you can then do
14 something with. And one of the things I'm seeing
15 is: there's a lack of process around this.

16 COMMISSIONER DOLL: Right.

17 CHAIRMAN RIVETTE: Is that something you'd
18 be interested in at least --

19 MR. PATTON: Oh, yes, definitely. And I
20 think the one thing I mentioned before, which is
21 maybe point number nine, is something I'm involved
22 with every day. I mean, I've gone through maybe

1 50 start-up companies, and worked with a lot of
2 corporate companies. And those are totally
3 divergent perspectives. And that's just something
4 I'm faced with, it seems, every week, is those two
5 divergent perspectives. And I could get opinions
6 on both sides of that. It's pretty controversial.

7 CHAIRMAN RIVETTE: Well, I think if we
8 develop the right process around this we're going
9 to get to those issues, and then we at least have
10 buckets to put the information in so we can
11 actually make decisions on it, versus its just
12 coming in as kind of a torrent and it sits there,
13 and you just say, "Oh, that's interesting."

14 MR. PATTON: Right. Okay. I'm up for
15 that.

16 CHAIRMAN RIVETTE: Andrea, what do you
17 feel like?

18 MS. RYAN: Ahh -- I can tell you more what
19 I don't want. I don't want to work on the budget.

20 CHAIRMAN RIVETTE: Got it.

21 MS. RYAN: But retention is something I
22 have a lot of interest in. And, I suppose, the

1 inward process in examination. John just offered
2 me a job examining. I said I've never examined
3 patents, but I started out my life prosecuting
4 them.

5 CHAIRMAN RIVETTE: A day-in-the-life -- we
6 could make it your life.

7 MS. RYAN: Not marketing, not budget --
8 probably not rules, per se, but the retention, in
9 process and art and quality is sort of part of
10 that.

11 CHAIRMAN RIVETTE: Max?

12 MR. GRANT: I'll take the budget, since
13 I'm going last. I'm interested in the retention
14 issues, but it sounds like there's lots of people
15 interested in that. I'm certainly familiar with
16 -- at least from my defense experience -- some of
17 the budgetary processes. But the communications
18 stuff is also particularly interesting to me. And
19 I think I can talk like a regular person.

20 MS. FAINT: Not to step out of the
21 conversation altogether, but one of the things I'm
22 interested -- we keep calling it "retention," and

1 what I call it is a "culture." It's a corporate
2 culture here. It's in the midst of huge change.
3 And we've got a chance here to create a
4 conversation and make it a place that the best and
5 the brightest really want to be here. That's what
6 I've always considered that public service is
7 about, and what people really want to do. And
8 this is one of those chances where we can start to
9 bring that in and recognize it and support it.

10 CHAIRMAN RIVETTE: On the phone: Dean,
11 Carl? What do you feel like?

12 MR. KAMEN: This is Dean. Again, I'd
13 almost, on any of these issues -- at a high level
14 --

15 CHAIRMAN RIVETTE: Right.

16 MR. KAMEN: -- because I don't have
17 details --

18 CHAIRMAN RIVETTE: No, no -- that's okay.

19 Mr. Kamen: -- it's pretty
20 interesting. I think retention, again viewed not
21 within the Federal rules of what's legal to pay
22 and not to pay, but the kinds of programs that you

1 put in place that could allow your people to be
2 rewarded, both for better output, more output, and
3 be consistent with the motivations that seem to
4 work in the private sector. And in the same way
5 -- as I think John was saying a little while ago:
6 you know, find a way to offer better products, and
7 more products. It is simply unrealistic in the
8 21st century, with backlogs that will probably see
9 in the next years of a million of these things --
10 it's unrealistic, especially since so many
11 different lawyers have figured out how to game the
12 system so well and what they do in writing
13 patents, and their objectives in having them --
14 it's unrealistic that there is one size that fits
15 all. And I think that instead of keep putting it
16 into more and more detailed levels of rules to
17 solve our problems, that get further and further
18 away from the initial motivation -- if, for
19 instance, you were to put a group together that
20 was supposed to come up with some fundamentally
21 different approach to some of these issues that
22 addresses the absolute original issue; like

1 recognizing that not all applicants are created
2 equal, and when some biotech company that has
3 their company on the line, that has spent \$300
4 million on some molecule is filing a patent, they
5 need to have, and deserve to have, and are willing
6 to pay to have an entirely different level of
7 scrutiny and certainty than the guy who invents a
8 new bird-feeder cleaner that realizes ever time it
9 rains the bowl in the backyard fills up, and if he
10 makes an asymmetric mount for it, when it fills up
11 with enough water, the weight of the water tips it
12 over 180 degrees, washes it out and lets the other
13 side fill up.

14 CHAIRMAN RIVETTE: Whoa. Whoa. Whoa.

15 MR. MOSSINGHOFF: Hey, Dean, could you go
16 slower? I'm taking notes on that.

17 CHAIRMAN RIVETTE: Hey, Dean -- that's my
18 application.

19 MR. KAMEN: My point is -- and I won't
20 hold you to it as being the actual number, 95
21 percent never get litigated, never do this, never
22 do that. But if we can all recognize that it's

1 part of the spirit of America, and part of what
2 the dreamers want -- and, frankly, to a small
3 business guy, or an independent guy, you might be
4 doing the biggest service in the world to say: it
5 only lasts five years. It can't really give you
6 this kind of assurance. It has a different set of
7 rules, it has a different set of values. But you
8 get it faster, you get it cheaper, or you get it
9 and it doesn't even get examined. So I guess a
10 whole sub-group on what would appeal to a group of
11 people -- not because of arcane rules, but going
12 right to the people that want to file -- give
13 these people their own choice, and they could say:
14 I want to file for this, or I want to file for
15 that, knowing full well what they did. And they
16 will not only not see it as another set of rules,
17 or a compromise, or something unfair, but they'll
18 see it as a highly responsive agency that has
19 created a new product that fulfills a very
20 different need for somebody who's a little
21 business person who might want this for all sorts
22 of different reasons. And I think there's a whole

1 class of opportunities that could be generated
2 there that in themselves create value for one
3 class and dramatically off-load some of these
4 burdens on the other class. And in that same
5 sense I would like to think that we could create
6 sub-groups that again could look at ways to make
7 -- not in the details of the rules but in a
8 high-level way -- the system work better for
9 everybody by putting responsibility back on the
10 applicant in such a way that we didn't create
11 another version of
12 how-will-people-game-these-rules? And, you know,
13 as kid I remember my father, early on, would throw
14 a candy bar at my brother and myself and say, "You
15 guys divide it up." And as we all know, the
16 diabolical solution there is: one of you gets to
17 cut it, and the other one gets to pick which piece
18 you want. And suddenly the Faustian situation
19 says: this is fair. I don't need a judge anymore.
20 And if you created some way -- not deep within the
21 rules -- but: hey, if you want to make these
22 really broad claims and they get invalidated,

1 there's a consequence. Or if you don't disclose
2 stuff in some way which isn't hidden in the rules,
3 there's a consequence. Or if you do certain
4 things -- limit the number of claims -- do
5 something, you get faster service, or you get a
6 different -- it seems to me that at a very high
7 level, smart people looking at what the issues are
8 now, ought to be able to try to construct
9 scenarios that could be given to the business
10 people that use the Patent Office, the inventors
11 that try to write patents, some method by which
12 their own self-interest will make them more
13 cooperative with each other, with the Patent
14 Office. And while I'm a big believer in the
15 adversarial system and everybody gets to protect
16 themselves, it has its limits. And we should try,
17 at a high level, to see if there are ways that,
18 while the adversary system ultimately has to
19 resolve the issues when you get to court, we
20 should be looking at ways to make the patent
21 system much more self-controlling in a way that
22 individuals benefit by doing things the right way

1 instead of gaming the system; and that we are each
2 incentivized by our own enlightened self-interest
3 to make the patent system more efficient, faster
4 and better. Because as one of you pointed out,
5 we're not going to hire our way out of this
6 problem, and you can't grow in an uncontrolled
7 way. We ought to look at some big picture stuff.
8 And among all of you smart people that could
9 inevitably tell me all the down-side and the
10 unintended consequences of that stuff, if some of
11 you would be willing to look at some of that a
12 high level, I'd be enthusiastic to see if we could
13 participate in finding ways that: hey, you get to
14 cut the piece, but the other guy gets to decide
15 which half he gets.

16 CHAIRMAN RIVETTE: Dean, thanks. Carl?

17 MR. GULBRANDSEN: Well, I'm really
18 concerned and interested in pendency, and
19 decreasing pendency without sacrificing quality.
20 One thing that I think it's important to note
21 about what Judge Rader had to say is that most of
22 the patents they look at are good patents. And

1 that's not something that gets out to public very
2 often. I am interested in the products that John
3 is talking about. One thing in particular I'm
4 interested in is being able to take advantage of
5 expedited examination without walking into the
6 trap of inequitable conduct, and how could we work
7 this out that people are willing to use this and
8 not put themselves in jeopardy in using it. The
9 crisis model tells us (off mike).

10 CHAIRMAN RIVETTE: Okay -- so, Dean and
11 Carl, one of the things I heard both of you say,
12 which you wouldn't say explicitly is
13 "communications."

14 MR. GULBRANDSEN: Yes.

15 MR. KAMEN: I'm happy to do that one.

16 CHAIRMAN RIVETTE: Okay, there are a
17 couple of ways we can play this -- and I don't
18 want to cut into too much more of our time. If
19 you don't mind, what I'll do is I'll write up who
20 wanted what; send it out as an e-mail, and let
21 everybody kind of grope on it for a couple days
22 and send it back. And we can kind of set up our

1 working groups along those lines. Does that sound
2 okay?

3 MR. GULBRANDSEN: Sounds fine.

4 CHAIRMAN RIVETTE: Because I think I've
5 got a good idea of where our interests lie. We're
6 not all going to get our first choice. I mean, my
7 first choice is: I'd love to work on the products
8 and the communications, to be honest with you.
9 We're not all going to get our first choice, but I
10 think we can get real close. And I think they're
11 all interesting topics -- except for budget.

12 MR. GRANT: Somebody's got to be tough.

13 CHAIRMAN RIVETTE: So if you don't mind,
14 why don't I take that on as a to-do. I will write
15 it up, send it out as an e-mail to everybody, and
16 then just kind of -- we could even do it
17 round-robin, with everybody kind of stating what
18 they want and letting the other group see it, and
19 then hopefully the end of next week just make a
20 decision and send it out, and see if everybody
21 agrees. If that process works -- do I hear a yea?
22 Okay. Let's turn our attention to goals.

1 DISCUSSION OF OFFICE GOAL SETTINGS AND OBJECTIVES

2 CHAIRMAN RIVETTE: I'm sorry I cut into
3 the time, Gerry, but you've got a good point --
4 you've got a real point of view. Do you want to
5 go into it a little more and kind of explain where
6 you're coming from on this?

7 MR. GRANT: I've got a bad back, so if I
8 stand up --

9 CHAIRMAN RIVETTE: I think we should all
10 stand when Gerry speaks.

11 MR. MOSSINGHOFF: Well, I believe that the
12 Office ought to have a firm goal of pendency --
13 not a series of a dozen scenarios that say if this
14 happens and that happens and that happens and the
15 moon rises over the west wall that this is going
16 to happen -- a firm goal which is decided upon in
17 the Office, recommended to the Secretary, probably
18 put in the budget document and says: if you give
19 us this budget, we will have average pendency down
20 to -- pick a number -- 33 months by the end of
21 2007. That would be the goal.

22 MR. GRANT: And it goes in the strategy

1 document and the budget has to reflect the
2 resources to accomplish it?

3 MR. MOSSINGHOFF: Well -- and I'm basing
4 it on my own history. When we came in, the Office
5 was falling apart, and we had a lack of examiners,
6 and we were adding backlog. And I set, with
7 Secretary Baldrige "18 by '87." It said we're
8 going to have an average time of pendency -- you
9 had three goals only, not 31 -- three goals that
10 said average pendency's going to be down to 18
11 months by the end of 1987 -- fiscal year 1987. It
12 took a lot of time to have me convince him that we
13 had to wait that long. He didn't want to wait
14 until '87, but I convinced him that that no other
15 think was doable. We doubled the size of the
16 corps; went from about 850 up to 2,000 -- actually
17 achieved it in '89, because there was a slip of
18 two years, a knowing slip of two years. When that
19 budget was recommended by Secretary Baldrige it
20 was adopted by President Reagan, it became part of
21 his budget submission. We raised the fees; we
22 were to keep the fees. And everything I did

1 during my tenure during Reagan I was when somebody
2 said "Hey, I've got a good idea. Let's do --
3 something or another -- say, picnic out by the
4 lake, and the answer is "Is that going to help me
5 with 18-by-'87. If it's going to help, we'll do
6 it. If it's not going to help, we're not going to
7 do it. That was my guiding principle. I haven't
8 seen that at all. Maybe John can help me out
9 here, but I haven't seen that, period. There is
10 no goal.

11 CHAIRMAN RIVETTE: Has the Office -- since
12 you were here, have they set those kinds of goals
13 -- Gerry?

14 MR. MOSSINGHOFF: After that I don't
15 believe so?

16 CHAIRMAN RIVETTE: I don't think so.

17 COMMISSIONER DOLL: Well, wait -- every
18 year when we submit the budget, every year we go
19 downtown and we say: if we get this much money,
20 pendency will be this -- assuming that the filing
21 rate is this, and assuming that the attrition rate
22 is this; based on historical averages, pendency

1 will be x. We set those goals. We do it in every
2 budget and we project it out five years. So we do
3 set goals. We set production goals, productivity
4 goals. We set first action pendency, total
5 pendency. So we do set the goals every year.

6 MR. MOSSINGHOFF: But they're totally
7 soft: "if we get the budget," "if the input is
8 this amount," "if the sun rises in the east" --
9 everything is a soft goal. There's no -- I
10 haven't seen it -- there's no politically-driven
11 goal; it's different for every technology center;
12 there's no overall --

13 COMMISSIONER DOLL: There is an overall
14 goal, and there's individual goals. And they're
15 not soft, because my contract with the Secretary
16 is based on achieving concrete goals. And every
17 year I say exactly what my electronic rate will be
18 next year, exactly what first action, total
19 pendency. I have hard goals, and we put that in
20 our budget document every year. So we have hard
21 goals that we are held to. This year we made nine
22 out of 10 goals. We missed first action pendency.

1 Some technology centers made it. Overall, the
2 office did not make the first action pendency
3 goal, but we made production, we made
4 productivity, electronic -- we made all the rest
5 of them. So we do have hard goals.

6 MR. GRANT: But I see the difference --
7 the private sector equivalent of the difference
8 is: you have earning goals projected out one year.
9 And I think what Gerry's talking about is a
10 measurable way of defining a long-term vision,
11 that then those annual goals would be forced to
12 try to accommodate. And I think it's got to be
13 far enough out -- he's just trying to come up with
14 a metric --

15 COMMISSIONER DOLL: I understand.

16 MR. GRANT: -- to drive strategy.

17 COMMISSIONER DOLL: Understood.

18 MR. GRANT: And to drive allocation of
19 resources.

20 MR. MOSSINGHOFF: And it doesn't change
21 every year. It's a political goal. I would even
22 submit it's higher than the Under Secretary. I

1 think it's a political goal adopted by the
2 Secretary of Commerce; hopefully adopted even
3 higher than that. Mine wasn't "We're going to
4 achieve this goal in '81, '82, '83, '84," this is
5 "18 by '87." It was my bumper sticker.

6 MR. GRANT: The higher --

7 MR. MOSSINGHOFF: Herb Klein once said
8 that if you can't put your policy on a
9 bumper-sticker in Washington it can't be enacted.
10 Well, I put mine on a bumper-sticker. It was "18
11 by '87." What we have now -- I just received
12 these yesterday "Strategic Plan Initiative No. PAT
13 11." "Objective: provide high- quality
14 traditional examination leading to final disposal
15 of most applications -- whatever "most" means --
16 "in xx months by 2012." That's as soft as I can
17 imagine. It's got "xx" it's got "most" in it.
18 There is no hard goal anyway analogous to the "18
19 by '87." And that didn't change. That was bought
20 by the President, and didn't change. And we don't
21 have that.

22 COMMISSIONER DOLL: The reason we didn't

1 publish hard goals in there is that was going
2 public, and the numbers were in the Presidential
3 budget that had not been submitted downtown yet,
4 so we were not comfortable releasing them until
5 they were approved and seen downtown. We can go
6 back now and fill in all those numbers with the
7 '07 budget that projects out five years. And I
8 can tell you exactly what we're going to be held
9 to for the next five years.

10 MR. MOSSINGHOFF: What is it?

11 COMMISSIONER DOLL: I don't have it with
12 me. But you were real close when you said --

13 MR. MOSSINGHOFF: 18?

14 COMMISSIONER DOLL: No. If we do nothing
15 except hire 1,200 a year, and we have an 11
16 percent attrition rate and an 8 percent filing
17 rate, we go to 35.9 months by, I believe, 2010.
18 Don't quote me on that. But I can get the
19 numbers. I have them, because I have all the
20 budget model projections. I just didn't bring
21 them along.

22 MR. MOSSINGHOFF: Well, I attended, and

1 you attended, another meeting, too --

2 COMMISSIONER DOLL: Yes.

3 MR. MOSSINGHOFF: -- kind of a rump
4 meeting that we had here.

5 COMMISSIONER DOLL: Rump meeting? Why
6 "rump?"

7 MR. MOSSINGHOFF: It was your rump.

8 COMMISSIONER DOLL: It was my rump that
9 was getting kicked.

10 MR. MOSSINGHOFF: But it just seems to me
11 -- it says: all right, but we may have higher
12 attrition than that, in which case we won't
13 achieve it, and all that. What I'm looking
14 towards is a goal that says: we're going to do
15 whatever we have to do --

16 CHAIRMAN RIVETTE: Come hell or high
17 water?

18 MR. MOSSINGHOFF: -- no matter what
19 happens. We'll tell you what it's going to be --
20 18 months by 1987 -- and we're going to get there.
21 And I'll tell you what attrition is. I'll manage
22 to make -- I'll get it. I'll get there. Yours is

1 variable, based on attrition -- right?

2 COMMISSIONER DOLL: Well, we have
3 variables in there, but we've set attrition at
4 what we project it to be in the next couple years,
5 based on some of these strategic plan initiatives.

6 MR. MOSSINGHOFF: But if it's higher than
7 that, your goal drops.

8 COMMISSIONER DOLL: No, if it's higher
9 than that, and I don't make the goal, I don't make
10 the goal, and then I have to go downtown and
11 explain why I didn't make whatever the month's
12 pendency is; 30.5, or 28 -- whatever it is. I
13 missed, I failed, I have to explain why. Now,
14 those are some of my excuses: attrition was too
15 high, filing rates were too high. I mean, I can
16 make excuses. They don't carry real well.

17 MR. MOSSINGHOFF: I'd like to see this
18 without excuses.

19 COMMISSIONER DOLL: Well, we do set forth.
20 But if we miss, we miss. And we're graded on how
21 many goals we make every year.

22 MR. MOSSINGHOFF: Well, maybe there's not

1 much to do, but I certainly haven't seen anything
2 like a political commitment to a goal in the last
3 --

4 COMMISSIONER DOLL: Well, I'd be happy to
5 share what all of our goals are, and those --

6 MR. MOSSINGHOFF: But they're all soft.

7 COMMISSIONER DOLL: I really don't think
8 they're soft. They're hard numbers that we manage
9 to, and if we don't make them we are held
10 accountable.

11 CHAIRMAN RIVETTE: Can you send down a
12 copy of -- you know, not the whole budget and
13 everything, but the goals? Just one page; just
14 what are those goals.

15 COMMISSIONER DOLL: Mm-hmm.

16 CHAIRMAN RIVETTE: Because I think at that
17 point --

18 COMMISSIONER DOLL: I mean, I could have
19 it by the end of the day. It's confidential, but
20 I can get John -- none of my people are here -- I
21 can get John Mielcarek to actually do that: what
22 our goals are, and what we've set them to be and

1 projected for the next five years.

2 MR. MOSSINGHOFF: Okay, but all I've seen,
3 John -- and maybe I just haven't looked carefully
4 enough -- are goals that have numbers within them.
5 And if the attrition is higher than you predicted,
6 then the goal slips, and the reason is the
7 attrition was higher, and everybody knows you get
8 more work per dollar out of more senior people
9 than you do more junior people. That's not what
10 I'm talking about. I'm talking about a political
11 goal: we're going to land a man on the moon before
12 this decade is out and return him safely to the
13 earth. That's what I'm talking about. And I
14 haven't seen that.

15 COMMISSIONER DOLL: Okay -- well, maybe I
16 need to share and explain exactly what it is.
17 Because the '07 President's budget does have
18 hardcore goal numbers in it. And I'd be happy to
19 share that.

20 MR. MOSSINGHOFF: And who's committed to
21 those? The Secretary?

22 COMMISSIONER DOLL: Well, I know I am. I

1 know Jon is. And the Secretary is always given a
2 copy of the goals and of the budget.

3 MR. MOSSINGHOFF: But I think what we need
4 is a Secretarial goal.

5 CHAIRMAN RIVETTE: How do we get that?

6 MS. RYAN: Yes, I was just going to say,
7 listening to you talk, I think you're sort of
8 talking at cross-purposes.

9 COMMISSIONER DOLL: Attorney-examiner.

10 MS. RYAN: No -- you have goals. But what
11 Gerry is saying -- and it took me awhile to
12 understand what he meant by a "political goal,"
13 and I think he means that it's got to be something
14 -- I'd be curious: how did you get the Secretary
15 of Commerce.

16 MR. MOSSINGHOFF: V-e-r-r-y carefully. We
17 had President Reagan.

18 MS. RYAN: Well, that's -- but that's --

19 MR. MOSSINGHOFF: And it did wonders for
20 us. It did wonders for me and the Patent Office
21 at the time. Because if somebody would say --
22 Arlene Triplett, the Assistant Secretary for

1 Administration, say, "Well, we really are in a
2 downward mode here. We're going to have to cut
3 the -- blah, blah, blah, the answer is: "Fine,
4 Arlene. You've got the power to do that. But let
5 me tell you, tomorrow morning I'm going to be in
6 the Secretary's office telling him that his goal
7 of 18 by '87 is fiction; we can't do it anymore.

8 MS. RYAN: And that's what John was --

9 MR. MOSSINGHOFF: The answer is: "Let me
10 think about it tonight and I'll call you in the
11 morning." And in the morning she'd say, "Well, we
12 really don't have to do that."

13 MS. RYAN: But it has to be the
14 Secretary's goal.

15 MR. MOSSINGHOFF: That was the key.
16 That's what I had that I don't see here.

17 MR. GRANT: The higher up the goal's
18 endorsed, the more you can deflect competing
19 priorities. I mean, it was the same -- the whole
20 think at Department of Defense is very similar:
21 different advocates of different services and
22 weapons programs -- whoever got the closest to the

1 strongest articulation -- you know, just like the
2 Strategic Defense Initiative. Once President
3 Reagan said it, well then it just didn't matter
4 what anybody else wanted, or thought, or believed
5 was a higher priority. That decision was made.

6 MR. MOSSINGHOFF: Right.

7 MR. GRANT: And so I think what Gerry is
8 saying is: you have to sort of figure out what
9 your center of gravity is; your highest goal that
10 somehow, from then the other priorities and the
11 other things that you're trying to do flow down
12 from. And then you have to figure out how to
13 articulate it in an elevator-delivery manner and
14 get the highest possible endorsement for it.
15 Because then you now have that clear priority
16 that's so hard to get.

17 MR. MOSSINGHOFF: Yes, and it could be
18 anything as simple as a Secretarial speech saying,
19 "And one more thing: as you know, we have the U.S.
20 Patent and Trademark Office as a key agency in our
21 Department. I know that pendency is of great
22 concern, and so I have personally committed to --

1 fill in the blank. That's the way the
2 government's run.

3 MR. GRANT: It's why different Department
4 heads will fight to get the President to say
5 something in the State of the Union, because then
6 they can go to OMB and say: look, you can't cut my
7 budget and give it to Agriculture. This is what
8 the President said is the priority.

9 CHAIRMAN RIVETTE: Why don't we get
10 weapons system inside the PTO.

11 MR. GRANT: I think he's already here.

12 MR. MOSSINGHOFF: That's exactly right.
13 You all said it better than I did. It was
14 absolutely -- that was the driver. We had three
15 goals. We had one in Trademarks -- "3-13;" first
16 action three months, 13. That was pretty easy.
17 Trademarks is about one-tenth of the budget. I
18 mean, I don't want to downplay it, but it's not
19 the big driver. We had a soft goal on automation.
20 But 18 by '87 was what everybody -- there's not a
21 person in town, or in the PTO that didn't have
22 that on their bumper-sticker -- including the

1 Secretary of Commerce, more important than
2 anybody. And I haven't seen that.

3 MS. RYAN: That's something that maybe we
4 can help with. I mean, how do you teach --

5 MR. GRANT: It's like the 600-ship navy.
6 It's hard to comprehend how to handle all these
7 competing things. But I know by this date I'm
8 supposed to have 600 ships.

9 MR. MOSSINGHOFF: Yes, and you're exactly
10 right. Having been a bureaucrat for a long time,
11 there's an enormous amount of effort goes to
12 getting the President's State of the Union to give
13 you a five-word throwaway line, because then you
14 go to the bank --

15 MR. GRANT: Or get the Green Berets to sit
16 next to Laura.

17 MR. MOSSINGHOFF: That's exactly right.
18 And we haven't done that. And pendency, I think
19 -- quality is quality. You continue to work on
20 quality. But the hardest thing for this agency to
21 do is to get a firm commitment and achieve it in
22 the area of pendency, and they've got to do that.

1 CHAIRMAN RIVETTE: So let's say we could
2 get a commitment on pendency internally at the
3 office.

4 MR. MOSSINGHOFF: Oh, externally from the
5 Secretary.

6 CHAIRMAN RIVETTE: How do you move that
7 up? What do you do? I mean, who touches who?
8 How do we logistically get the Secretary --

9 MR. MOSSINGHOFF: We put it in our report,
10 to start off with.

11 CHAIRMAN RIVETTE: Mm-hmm.

12 MR. MOSSINGHOFF: You draft the whole rest
13 of the report. I'll draft that sentence.

14 CHAIRMAN RIVETTE: Okay. I got you.

15 MR. MOSSINGHOFF: You put that in the
16 part, maybe we meet with the Secretary. We talk
17 with Jon about who to get to key into this thing.
18 And then you just make it happen. And so if
19 attrition is higher than it should be, and it
20 looks likes it's in danger, the answer is: fix
21 your attrition, or hire more people or whatever.
22 The answer is not: change the goal. And I'd like

1 to see these as a variable goal. I don't think
2 they've remained constant over any period of time.
3 I mean, when we get the goals, let's take a look
4 at that.

5 COMMISSIONER DOLL: The only thing that I
6 might add that may be a little misconceiving is
7 that every year we re-validate. We project one
8 year out; we project five years out. We're held
9 to one year, but then for the next five-year
10 period, we re-adjust the numbers based on --

11 MR. GRANT: It's forecasting. It's not a
12 goal, it's a forecast.

13 MR. MOSSINGHOFF: It's a scenario.

14 COMMISSIONER DOLL: Well, we're held --

15 MR. GRANT: No -- I understand. Annually,
16 you're held to those forecasts.

17 COMMISSIONER DOLL: Annually -- yes.

18 MR. GRANT: But they're readjusted, almost
19 like budgets are.

20 COMMISSIONER DOLL: Yes.

21 MR. GRANT: Based on what's happened.

22 COMMISSIONER DOLL: Correct. Yes.

1 MR. GRANT: And what we're talking about
2 is a much longer time --

3 MR. MOSSINGHOFF: A political goal that
4 says, "Goal: We're going to land a man on the moon
5 and return him safely in this decade."

6 MR. GRANT: And the way that you implement
7 it is, basically, Jon Dudas has to convince
8 Secretary Gutierrez that this should be among his
9 priorities. And then -- given the realm of what's
10 realistic, right? -- Secretary Gutierrez either
11 working surreptitiously through Assistant for
12 Domestic Policy or what have you, try to get it
13 on, as best you can, on somebody's radar screen at
14 the White House. I mean, that's how you go about
15 trying to maneuver getting those higher level
16 endorsements. But I think in terms of how the
17 PPAC could help, we basically need to assist Jon
18 in convincing the Secretary that this is the right
19 goal and it needs his support.

20 MR. MOSSINGHOFF: And we don't have a
21 moving target every year to be adjusted or
22 whatever -- which is really a scenario. It's not

1 a goal, it's more a scenario than a goal. It's a
2 goal for one year. After that, it's a scenario.
3 That's not going to do it.

4 MR. WESTERGARD: It seems like we have to
5 convince Jon and John that that kind of goal is a
6 realistic option, because of the fact that
7 attrition has played so critical a role, and
8 because of the fact of technology and applications
9 are being filed in greater and greater numbers,
10 and the like. But how is it realistic?

11 MR. GRANT: But, see, once you set the
12 main goal, that drives the policy decisions you
13 make underneath. So you set your goal.
14 Attrition's higher than you expected, you need to
15 make changes in the rules, or you need to do
16 additional hiring and make budgetary changes. It
17 drives these sort of sub-policy priorities and how
18 you allocate it.

19 MR. MOSSINGHOFF: We were hearing that
20 attrition is going to be around 13. We heard it
21 was down to 10. That's good. That's a lot better
22 than the 13 that I heard two weeks ago. But

1 that's still pretty high. And it seems to me that
2 we have an Office of Personnel Management, if
3 that's really a problem -- and my own recollection
4 is we buy a lot of work cheaper from senior people
5 than we do from junior people. There's no
6 question about that. It seems to me if it's a
7 real problem, that's something that Jon Dudas
8 works directly with his counterpart at OPM, or
9 maybe the Secretary works with the head of OPM.
10 That's what they're there for. They're the
11 government, they're supposed to help us manage
12 human resources. If we've got an attrition rate
13 that's too high, because we can't achieve our goal
14 let them help us fix it. So there are two ways to
15 do it, John. You can go work with the GS-13s and
16 see if they fit within whatever policies are
17 given. That's one way to get things done at OPM
18 -- not a successful way, usually. The other way
19 to do it is to have the Secretary call on the head
20 of OPM and say, "I've got a big problem here. I
21 can't achieve my goals because we've got 13
22 percent attrition. Help me. Give me something

1 that fixes that. You're the human resources
2 expert. Help me. You're with the government."

3 CHAIRMAN RIVETTE: So where do we go from
4 here?

5 MR. MOSSINGHOFF: Well, I think, one, we
6 decide among this group if that's a worthy thing
7 to do.

8 CHAIRMAN RIVETTE: What do you feel? I
9 mean, as a group -- do we feel we should get a
10 goal that we can -- you know, the 600-ship navy?
11 Is that something we think we should do? Should
12 we have more discussion on it? Andrea, you've got
13 that look on your face.

14 MS. RYAN: Well, I'm just wondering: is
15 that our call, or isn't it the Patent Office's
16 call? I mean, we had spent some time before
17 saying --

18 CHAIRMAN RIVETTE: Well, I think one of
19 the things we could do is --

20 MS. RYAN: -- that we advise --

21 CHAIRMAN RIVETTE: Right -- we can make
22 recommendations. Is this one of the things that

1 we should recommend so that the Office -- you
2 know, can we make the Office's life easier on
3 resource allocation? That's your point -- if I'm
4 right, Gerry.

5 MR. MOSSINGHOFF: Well, my point is:
6 you're never going to achieve that goal unless you
7 set it now for five years from now. It's just not
8 going to happen.

9 MR. GRANT: And the point is, I think, you
10 need one, clear, articulable goal. Pendency
11 strikes me as probably the right one. But it
12 could be something different. It could be quality
13 needs to be x by x date. But my hunch is that's
14 probably not right.

15 COMMISSIONER DOLL: Well, Max's point is
16 really well taken. You've got to figure out the
17 right main goal. We can drive pendency down. We
18 can drive allowances up -- if we sacrifice
19 quality. What we're trying to do is to balance
20 quality and the cases that we're turning out. So,
21 just driving the pendency number down to some
22 unrealistic number -- if we don't look as close,

1 the examiners get used to handing things out, we
2 could make that happen. So it's a total picture.
3 I don't think it's just one goal. It's one goal
4 that has a bunch of sub-goals: quality, the first
5 action pendency, the electronic filing. We've got
6 a lot of things going on at the Office, and we're
7 juggling a lot of balls. I hate to just focus on
8 one thing, and then lose my concentration on the
9 entire picture.

10 MS. RYAN: Kevin, I'm intrigued by what
11 Gerry says, because I was very green and naive
12 when I came into this about political clout. And
13 I've watched enough of it. And somebody said
14 something here today that made me realize that a
15 lot of people sat around in rooms -- not this
16 room, but like this -- and talked about diversion
17 -- fee diversion; and it was never going to
18 change. Politically, forget it. It wasn't going
19 to happen. But enough people made it -- at least
20 it's my view -- made it a political issue, that we
21 actually changed that. So maybe -- what I hear
22 you saying is if you take at least one thing that

1 the Patent Office is trying to do and make it a
2 political issue -- but, again, I think that's Jon
3 Dudas' call, to make it a political issue. But I
4 always said -- diversion, you can scream and yell
5 about it's awful, it's terrible, but it's written
6 into the fabric of the Constitution. It's going
7 to keep happening. Well, didn't John just say
8 there hasn't been diversion for --

9 MR. MOSSINGHOFF: Three years. Well,
10 President Bush decided not to do it. Yes.

11 MS. RYAN: Well, that's the point. A
12 political agenda.

13 MR. GRANT: And I agree you've got to
14 worry about everything. But you need something
15 that is articulable that drives you. So maybe
16 it's not 18- month pendency; maybe it's 3 percent
17 non-retention; maybe it's 97 percent retention in
18 2012. But I think you dramatically benefit if you
19 have that single driving vision -- priority --
20 from which other things flow.

21 MR. MOSSINGHOFF: Just to respond to the
22 one thing. We could say we're not going to

1 sacrifice quality by saying: what is the rate --
2 today, what is the rate of allowances versus
3 abandonments? Whatever it is -- x.

4 COMMISSIONER DOLL: 54.6.

5 MR. MOSSINGHOFF: We're not going to
6 change that. So we're going to achieve 27 months
7 time of pendency in five years, and we will have
8 the same ratio of allowances to abandonments.
9 That's your quality. That says you can't just
10 allow patents willy-nilly.

11 COMMISSIONER DOLL: Well, respectfully,
12 though, that number really depends on what comes
13 through the door. We don't determine what's
14 allowable. It's what comes in the door that meets
15 the statutes that gets allowed. And recently that
16 number's been dropping. But if the quality of the
17 applications coming in dramatically improves next
18 year, that allowance rate could shoot to 80, 90
19 percent -- and be valid, and be real, and be
20 quality. It depends on the input we're getting.

21 CHAIRMAN RIVETTE: I think this is
22 something -- oh, I'm sorry. Go ahead.

1 MR. PATTON: Being involved in R&D
2 development, you have out of three things you
3 always say you can always have two: out of
4 schedule and budget and quality, pick two. It's
5 an inescapable rule. So if the 18-'87, whatever
6 -- 2010 -- you know, whatever it is; 2010, I don't
7 know it is. It's a catchy phrase. Everyone
8 understands it. Okay, so we can't sacrifice
9 budget or quality. And if Secretary Gutierrez
10 backs it, does that mean we can have more budget
11 to meet those goals? And the question is: would
12 more budget -- I was listening to Jon Dudas --
13 would more budget solve those goals? That's the
14 conundrum I have right now. Because I've always
15 labored under those three issues: budget,
16 schedule, quality. And now I've heard that if I
17 say quality and schedule, that budget might not
18 get it. But if there's a plan, intact, would it
19 be possible to do -- I don't know -- I'm making up
20 numbers -- 20-10 -- can we have extra budget? Can
21 we go and say: "This is our goal. We're going to
22 make it. But these are the reasons. Give us more

1 money?"

2 COMMISSIONER DOLL: I think we fought very
3 hard just to get access to the full fees that we
4 collect.

5 MR. PATTON: So that's --

6 COMMISSIONER DOLL: To actually get more
7 than that, then you're asking the taxpayers to
8 subsidize the patent office, and that's not --

9 MR. MOSSINGHOFF: I don't see that as
10 realistic.

11 COMMISSIONER DOLL: See, we agree on a
12 lot.

13 MR. PATTON: So then we have quality and
14 budget, and schedule's not going to happen. It's
15 -- there's no way.

16 MR. MOSSINGHOFF: Well, no one indicted me
17 for sacrificing quality when we achieved 18 by
18 '87; me or Rennie Tegmeyer, or anybody else.
19 There was no -- I lived in the world of squeaky
20 hinges, and I didn't hear any squeaky hinges
21 saying that quality was suffering. We had the
22 same time; the examiners were given exactly the

1 same time -- 20.4 hours, you talk about. I
2 wouldn't recommend changing that. I know that
3 involves all kinds of negotiations with the
4 bargaining unit and all the rest. That stays the
5 same. So I think it's just a scare tactic to say:
6 well, we're going to have to sacrifice quality.
7 If the same examiners, under the same supervision,
8 work 20.4 hours on average, I would think quality
9 would be about what it is now. But I could see
10 someone who doesn't want to live to a schedule
11 say, "Well, you're going to sacrifice quality." I
12 don't believe it -- if it's 20.4 hours. If you
13 change that to 15.4 hours, yes, maybe there is a
14 good case. But if you have the same amount of
15 time, on average, that an examiner can spend, and
16 the same databases to search, and all the rest,
17 why would quality go down? Other than people
18 getting lazy?

19 MR. GRANT: But then we want quality to go
20 up. I mean, that's one of the big criticisms of
21 the Office.

22 COMMISSIONER DOLL: We worked really hard

1 for the past three years. Because three years ago
2 the quality numbers, the error rate was 6 percent.
3 And it was 5 percent last year -- or the year
4 before; and then 4 percent last year; and 3-1/2
5 this year. We've worked very hard at driving that
6 down.

7 MR. MOSSINGHOFF: And my recommendation
8 would be: continue to work hard doing that, and we
9 won't have to worry about it.

10 COMMISSIONER DOLL: But the number of
11 allowances have also dramatically decreased in the
12 last three years. If you look at our allowance
13 rate, it has dropped. At one point in our time it
14 was over 70 percent.

15 MR. MOSSINGHOFF: Why would you have to
16 change that, just by having a hard, political
17 Secretarial goal?

18 MR. GRANT: Well, here's one thought:
19 given the environment, with the judges, and
20 political and stuff -- wouldn't you say that, at
21 least in terms of the public perception, that the
22 primary issue is quality, not pendency? If so,

1 then wouldn't you want to articulate your single
2 driving goal in terms of quality, not pendency.

3 MR. MOSSINGHOFF: Well, even if you could
4 do it --

5 CHAIRMAN RIVETTE: There's the problem.
6 The issue on what is "quality" -- it's an
7 amorphous thing.

8 MR. GRANT: They've done pretty well, I
9 think, trying to quantify something which I would
10 submit is probably not quantifiable.

11 CHAIRMAN RIVETTE: Well, IBM's been trying
12 to do that.

13 MR. MOSSINGHOFF: Pendency is
14 quantifiable.

15 MR. GRANT: Agreed. I mean, ease of
16 measurement is a big piece of this.

17 MR. MOSSINGHOFF: And as we go out to the
18 four years -- I saw one of those -- there's, what?
19 2800 has a four-year time of pendency? Or 4.4?
20 You start getting up to four, five, six years.

21 COMMISSIONER DOLL: And some are higher.

22 MR. MOSSINGHOFF: It's too long. And one

1 of the shocking things to me -- it was really a
2 surprise -- when I first came in as Commissioner.
3 I went out, and Isaac Fleischman got me out --
4 some people still remember him -- talking to a lot
5 of people, and everybody wanted to talk about
6 pendency. And that surprised me. You know, the
7 person on the street in KMLX in St. Louis wanted
8 to talk about the time it takes to get a patent,
9 and the pendency. And it surprised me that lay
10 people would even know about that.

11 MR. GRANT: But is that the case today?

12 MR. MOSSINGHOFF: Probably not. I don't
13 know. But as pendency starts getting up to five,
14 six years --

15 MR. GRANT: It's a big problem. I'm not
16 suggesting that it's not. But the Supreme Court
17 Justices that may or may not know a lot about
18 patent policy, what they're writing about is not
19 pendency, it's quality.

20 MR. MOSSINGHOFF: Quality. Well, I think
21 the Office has done a good job in trying to
22 quantify what I think is essentially a

1 non-quantifiable parameter -- quality.

2 COMMISSIONER DOLL: Gerry's point is well
3 taken, but one of the things that we're going to
4 try to do next year or this year with one of our
5 initiatives is quantify exactly: what do you
6 expect for \$1,000 and 20.4 hours of examination?
7 What level of quality is realistic? What can you
8 expect? And that's a real question. Because if
9 you take a case that you're going to litigate, you
10 dump a lot more than 20.4 hours onto somebody
11 who's making \$40 an hour.

12 MR. PATTON: You know, it's hard for me to
13 understand because a complex software architecture
14 system patent -- I mean, even sitting down across
15 the table with a very high-level software
16 engineer, with another guy, and just talking about
17 it takes a whole day, just to describe the data
18 base and the theory of it. I mean, it's
19 incredibly complex. I'm amazed that with
20 something as complex as that, you can even closely
21 give it the time you need. That's why maybe the
22 product thing you were talking about is key.

1 Because what would it cost to have 40 hours on
2 something like that? Something that complex? And
3 other things, maybe it's 10 or something?

4 COMMISSIONER DOLL: Well, that number's an
5 average. And the computer architecture, the
6 digital encryption -- the highest H for BD that we
7 have, I believe, is --

8 CHAIRMAN RIVETTE: What? H? What --

9 COMMISSIONER DOLL: "Hours for balanced
10 disposal" -- the average amount of time that an
11 examiner has to do an application from start to
12 finish -- the highest number is --

13 VOICE: 31.6.

14 COMMISSIONER DOLL: I thought it was 35.
15 Okay -- 31.6, for a GS-12.

16 MR. PATTON: What's a GS-12?

17 COMMISSIONER DOLL: That's the average
18 working grade. But the primary examiner is a
19 GS-14, and their grade factor is 1.35, so they get
20 -- you divide 1.35 into that 31.5 to get what
21 their goal is. And it drops down to 20-some hours
22 for a primary examiner.

1 MR. GRANT: A new examiner is a GS --

2 COMMISSIONER DOLL: A brand-new examiner
3 comes in as a 5, 7, 9 or 11. The vast majority
4 come in as 7s and 9s. Ph.D.s come in as 11s.

5 MR. MOSSINGHOFF: They would be actually
6 higher.

7 MR. GRANT: Yes.

8 COMMISSIONER DOLL: And then the hours
9 increase.

10 MR. PATTON: Yes -- because I know I've
11 been involved in quite a few different issues, and
12 I just find it phenomenal -- I never realized it
13 -- even 20 or 30 hours. I thought it would be so
14 much more on highly complex patents, how you could
15 ever discern it. And then other things, like Dean
16 said -- you know, the bird-feeder issue. You know
17 --

18 CHAIRMAN RIVETTE: That's 48 hours.

19 COMMISSIONER DOLL: We think the examiners
20 do a tremendous job with the constraints that they
21 have and the amount of time that they have to
22 examine an application. I think they do a

1 phenomenal job in the time that they have.

2 MR. PATTON: Yes, that's amazing.

3 COMMISSIONER DOLL: But, I mean, if you
4 talk about doubling the time, in 2010 we don't
5 have 1.3 million cases in backlog, we have 2.5
6 million cases in the backlog. We just doubled the
7 time.

8 MR. KAMEN: But as an example of maybe
9 the kind of thing I think you creative guys could
10 come up with -- if the person requesting the
11 patent is given a choice -- so they don't feel
12 like there's yet another thing out of their
13 control -- that said, "I'm going for the super
14 exam."

15 COMMISSIONER DOLL: Yes.

16 MR. KAMEN: I'm going to pay twice as
17 much money, or five times as much money, because
18 inevitably we know this is going to be a patent
19 that's litigated between Microsoft and --

20 CHAIRMAN RIVETTE: AT&T.

21 MR. KAMEN: \$100 million in legal fees,
22 it's worth more than 10 hours of work. I am going

1 to electively agree to life to a higher standard,
2 be less likely to get broad claims -- and you can
3 make a whole list of things that this person
4 knowingly is going in to get, but in return they
5 get a document that presumably has a higher
6 threshold in terms of its certainty of value,
7 because other people have been given a better shot
8 at looking at it. And then the person who's going
9 to ask for this patent has made a choice. And I
10 think it would be very acceptable, because it's an
11 option that you can either go for -- and there may
12 be multiple tiers of this, and there may be ways
13 to do it that are transparent enough that it isn't
14 in a set of rules that inequitably hurts one group
15 while it helps another, or solves one intended
16 problem but causes 15 unintended issues -- which
17 is what happens when you guys now have 10,000
18 pages of law on anything. Let's try to come up
19 with some products that meet the real needs of
20 really different situations.

21 MR. PATTON: Not knowing the logistical
22 schedules -- but here's a rough idea: if, by our

1 next meeting, a process has been defined, then by
2 the following meeting there has been data gathered
3 -- okay? -- as the next --

4 COMMISSIONER DOLL: I don't mean to
5 interrupt, but I'm much more impatient than that.
6 I've been talking to Kevin, I've been talking to
7 some people on the outside, and I --

8 MR. PATTON: Well, at our first meeting --

9
10 COMMISSIONER DOLL: Well, I would like to
11 start having these meetings with stakeholders,
12 like patentees who have five or 10 patents, who
13 have sued, or who have been sued; talk to the bar;
14 talk to the trade groups; talk to the different
15 trade groups. And I'd like to start that really
16 soon.

17 CHAIRMAN RIVETTE: As we've discussed: I
18 think without a process --

19 COMMISSIONER DOLL: I agree.

20 CHAIRMAN RIVETTE: -- we're going to end
21 up with more pain in the long run.

22 COMMISSIONER DOLL: But you're really

1 smart. And good lookin'. Can you get it done
2 by Christmas?

3 CHAIRMAN RIVETTE: I think you'll end up
4 with more pain.

5 COMMISSIONER DOLL: No -- I totally agree.
6 But I would like to do this as soon as reasonably
7 possible. Because what we might get back is: we
8 don't want a suite of products; we want what you
9 have right now. And if that's the answer we get,
10 then we have to craft a way to deal with that
11 situation.

12 MR. PATTON: But what I was leading up to
13 -- but not aggressively enough -- I know where to
14 set the bar now when I'm getting metaphorical --
15 but next week, when we have all this relatively
16 done -- let's say we had it done next week -- when
17 to effect a goal; to effect, actually, a change in
18 the law? Are we talking two, three years? Four
19 years? I mean, how long, when we have it all done
20 -- you and Jon Dudas have said, "This is what
21 we're going to do; this is what we want." How
22 long to actually change something? How long is

1 that?

2 COMMISSIONER DOLL: Rules changes we can
3 do internally. Statutory changes, which a suite
4 of products would require, could be two, three,
5 five years. And I'm not that familiar.

6 MR. WESTERGARD: At least that.

7 MR. MOSSINGHOFF: It's going to be a train
8 wreck with the reform --

9 MS. RYAN: We've been trying for 30 years
10 to change the statue.

11 MR. MOSSINGHOFF: All of a sudden the
12 Administration comes up with a very complicated
13 set of types of patents. What that does to a
14 Democratically-controlled Congress with reform
15 legislation is anybody's guess. It sounds like
16 it's a train wreck.

17 MR. WESTERGARD: I think that's right.

18 MS. RYAN: And probably what would happen
19 is the bills now are probably going go through in
20 the next year or two. You might be talking 10, 20
21 years down the road.

22 MR. WESTERGARD: That is the problem.

1 Because they take up reform almost every 10 years.
2 You know, they don't take it up on a regular
3 basis.

4 CHAIRMAN RIVETTE: But I would stand back
5 and say: historically, that's the case. I think
6 you guys are right. But I would go back to what
7 Dean was saying before: let's change the
8 conversation. I think you can put this on a
9 competitiveness issue. And I think you can get
10 changes, sooner than later. I really think if you
11 structure the communications properly you're going
12 to have a much better shot at this thing.

13 MR. GRANT: It depends on your ability to
14 convince the relevant Congressional staff that
15 it's the right move.

16 CHAIRMAN RIVETTE: Exactly. A lot of that
17 happens by convincing --

18 MR. MOSSINGHOFF: The major associations
19 have already taken a kind of a dim view of this.

20 CHAIRMAN RIVETTE: Right.

21 MR. MOSSINGHOFF: AIPLA, and IPO are not
22 at all enamored with this idea at all.

1 CHAIRMAN RIVETTE: And that's why I want a
2 process to go through.

3 MR. MOSSINGHOFF: And it's going to also,
4 I think, the issue of whether or not it's not an
5 elitist-type situation, where if you're an elitist
6 IBM you can afford to buy a --

7 CHAIRMAN RIVETTE: Oh, come on -- we're
8 the salt of the earth --

9 MR. MOSSINGHOFF: -- but if you're Micron
10 --

11 CHAIRMAN RIVETTE: Little start-up
12 company in Boise. We could (off mike) fast over
13 there. Gerry, you're sitting over here from now
14 on.

15 MR. MOSSINGHOFF: Did I do that right?

16 MR. PATTON: So the real issue is --
17 again, I'm just learning and I'm just kind of
18 putting pieces of the puzzle together -- when I
19 asked Judge Rader, "Are we safe?" I wanted to see
20 him say that -- I can see why he's as good as he
21 is. He found a way not to answer that the first
22 time. And I asked it again. And I'm not sure

1 that I got that, but I got the feel that we're
2 not. So the question I'm postulating to this
3 group is: is it the vision of this group that if
4 we at least talk about the fact that the United
5 States, as the golden standard for patents, if we
6 are running into trouble 20 years from now -- for
7 whatever reason it is -- and it takes 10 or 20
8 years to make a change, it's the same thing I hear
9 Craig Barrett talk about when he made his report
10 to Bush on competitiveness. It's generational to
11 fix our educational system to catch up with what
12 other countries are doing right now.

13 CHAIRMAN RIVETTE: Right.

14 MR. PATTON: I keep hearing that in so
15 many areas.

16 CHAIRMAN RIVETTE: But I'm not sure that's
17 the case, to be honest with you.

18 MR. PATTON: Okay.

19 CHAIRMAN RIVETTE: I think that properly
20 done -- you've got to get the constituents, you've
21 got to get the pressure on the political people --
22 but that becomes your different processes. But

1 that's going to require a real communications
2 issue. And does the Office want to do it? Do we
3 want to do it? I mean, there's a whole set of
4 other discussions that have to take place on
5 convincing the world that this is a problem.

6 MR. PATTON: Well, you know, Gerry, one of
7 the things I just wanted to you is about the
8 "elitist" view. I've been thinking about that,
9 since this was proposed in a telephone
10 conversation. But it sounds like right now, some
11 people aren't getting -- all patents aren't
12 getting the same amount of time. I mean, a simple
13 patent is getting less time now, and a more
14 complex patent does get more time. Is that
15 correct?

16 MR. MOSSINGHOFF: Yes. Somewhat -- yes.

17 MR. PATTON: So aren't we just ratifying
18 --

19 MR. MOSSINGHOFF: And that's been the case
20 long before my tenure. There's always been this
21 production requirement of the examiners, and it
22 always says that it's a two-axis matrix: seniority

1 on one axis, and complexity of technology on the
2 other axis. And so you tell me if you're a GS-13,
3 and you're doing mainframe computers, then I tell
4 you what your average time is.

5 MR. PATTON: So by changing these two
6 statutes of patents, or three, are we just
7 validating what's already happening? Or are we
8 keeping the bird-feeder from becoming 40 hours, or
9 20 hours? I'm just trying to understand.

10 MR. MOSSINGHOFF: It's a marginal
11 difference, though. What did you say, it's 31?
12 What's the lowest?

13 COMMISSIONER DOLL: 18, 16.

14 MR. MOSSINGHOFF: 16 to 31, average is
15 20.4 as we heard today. So they're in the same
16 ballpark. It's just that a diesel engine, or a
17 rocket engine, gets more time than a bird-feeder.
18 But it's not one's 16 and one is 28 or something.

19 MR. BUDENS: The range is pretty darn
20 small.

21 MR. PATTON: What would you guys propose
22 the range to be? I'm just curious -- just off the

1 top of your head?

2 MR. MOSSINGHOFF: The high?

3 MR. PATTON: Yes -- if there was to be
4 this --

5 MR. MOSSINGHOFF: No, I'm not in favor of
6 this.

7 MR. PATTON: You're not?

8 MR. MOSSINGHOFF: No, I think there's so
9 much more work has to be done on a suite of
10 products. I have lived through -- there was a
11 Johnson commission on the patent system which had
12 to do with competitiveness -- President Johnson.
13 A lot of things they had were totally radical at
14 the time. It was reported in the mid-1960s. They
15 had publication after 18 months; first to file --
16 which is now on the reform bill -- oh, two or
17 three other -- self- sufficiency. That was 50
18 years ago. That was mid- 1960s that that first
19 came out, and we're just now seeing legislation
20 moving through the Congress. This idea is very
21 radical: a suite of products where you have petty
22 patents -- that's been on the plate for many, many

1 years before; academicians talking about "petty
2 patents." That's what we're talking about for the
3 bird-feeder, I guess, is a petty patent. Deferred
4 examination was actually recommended by the
5 Johnson commission. That was opposed by everybody
6 that looked into it at that time, and still is
7 opposed by the major players. This is a very
8 radical idea, this suite. No other country --
9 Germany has a petty patent, I think. But most
10 other countries have the same kind of patents we
11 have. We'd be breaking all kinds of new ground
12 internationally. Everybody has this. Everybody
13 has 20 years from time of filing -- that was part
14 of the GATT-TRIPS agreement. So this is a very
15 radical proposal, which is generally opposed by
16 the interest groups right now.

17 MS. RYAN: And I think the reason it's
18 opposed is they just don't know what the courts
19 are going to do with that. And, as you know,
20 uncertainty in attorneys, it doesn't go well, and
21 with business. And so I think that that's -- you
22 know, I think it's a really interesting idea, but

1 because -- I just think, practically speaking,
2 it's going to be very, very difficult to get any
3 time in the next 10 years.

4 COMMISSIONER DOLL: I don't buy that as a
5 reason not to do it. What I look at right now is
6 if you're waiting 30, 40 months to get a first
7 action, and that doubles by 2010, does the patent
8 system become meaningless? Because you don't have
9 an instrument that you can use offensively or
10 defensively. That's what we're trying to avoid.
11 That's what I'm trying to avoid, is making the
12 patent system not relevant anymore.

13 MR. MOSSINGHOFF: That's what I'm trying
14 to avoid with my hard political goals on pendency.
15 Same exact thing.

16 COMMISSIONER DOLL: I appreciate that, and
17 I understand it. I just would like to be
18 extremely radical, to change the system, to give
19 the ultimate users and stakeholders what they
20 think they need to make business decisions and run
21 their businesses. And it is radical.

22 CHAIRMAN RIVETTE: I was just informed

1 there are people outside waiting to come in. We
2 were supposed to do this by two o'clock, and we've
3 gone over. I think it's a discussion we need to
4 continue. How do we want to continue it? I don't
5 think this is "we wait 'til next time." I think
6 this is a conversation that we need to have. I
7 think we've got one phone call next week --
8 hopefully, Tuesday or Wednesday, if your office
9 could set it up -- which would be about the annual
10 report; who's going to do what to whom and when?
11 Because we've got to get that done this month.

12 COMMISSIONER DOLL: I thought Gerry took
13 care of that.

14 CHAIRMAN RIVETTE: But do you really want
15 Gerry to -- I mean, it's up to do. I'll let Gerry
16 write the report --

17 MR. MOSSINGHOFF: It'll just be a three or
18 four sentence report.

19 CHAIRMAN RIVETTE: That's exactly what
20 I'm thinking. "This is a very simple problem."
21 In fact, he's already got it right now, and we can
22 file it, and we'll be done.

1 MR. GRANT: The short ones take longer to
2 draft.

3 CHAIRMAN RIVETTE: No, he's already got
4 it. So I think we should set up that. I think we
5 need to have a call, probably in about a week from
6 that on this topic, on the goal-setting. And what
7 do we need to do to talk about that and actually
8 get to a resolution: what this group wants to do
9 with some goal-setting. I think we need that.
10 Does that feel okay to you?

11 MR. MOSSINGHOFF: Yes, I can work around
12 some scheduling that I can't change next week.

13 CHAIRMAN RIVETTE: Right -- but I'm saying
14 if we can do that.

15 MR. MOSSINGHOFF: I've asked John to give
16 me all of the projections -- let's say going back
17 to Jon Dudas' time -- all the projects on pendency
18 as they move forward; not the whole budget, but
19 just what you said it was going to be in, oh --

20 CHAIRMAN RIVETTE: The forecasting versus
21 reality.

22 MR. MOSSINGHOFF: '03, '04, '05, '06 --

1 whatever you said it was going to be, just give me
2 those pieces of paper.

3 COMMISSIONER DOLL: We can pull that
4 together fairly quickly. And also we have copies
5 --

6 CHAIRMAN RIVETTE: Yes, why don't you send
7 it to everybody.

8 COMMISSIONER DOLL: Absolutely. We also
9 have copies of the '07 and '08 budget submission
10 goals here that I want to talk to Kevin and you
11 about, too -- if that satisfies your need.

12 CHAIRMAN RIVETTE: So that will get those
13 two topics. Because we've got to move on and
14 bring people in. I say we take a five-minute
15 break right now.

16 MR. KAMEN: Guys, while you're taking
17 your break, I have some terrific news for all of
18 you.

19 CHAIRMAN RIVETTE: Yes?

20 MR. KAMEN: I've got to leave -- any
21 chance you're going to be scheduling next week to
22 talk about fundamental ideas about (off mike) --

1 CHAIRMAN RIVETTE: Absolutely, Dean. And
2 I want to thank you very much for taking the time
3 on the phone. It's a pain in the rear. But I
4 thank you very much, sir.

5 MR. KAMEN: Well, thank you. This was
6 probably, at least from my end, the most
7 interesting meeting. And I look forward to having
8 some fun here.

9 CHAIRMAN RIVETTE: Yes -- next time in
10 person, Dean.

11 MR. KAMEN: Thanks a lot.

12 CHAIRMAN RIVETTE: Take care.

13 MR. KAMEN: Bye.

14 CHAIRMAN RIVETTE: Okay -- let's take
15 five.

16 (Whereupon, at 2:34 p.m., the
17 PROCEEDINGS were adjourned.)

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